No. 75-562

In the Supreme Court of the United States

OCTOBER TERM, 1976

ROSEBUD SIOUX TRIBE, PETITIONER

v.

HONORABLE RICHARD KNEIP, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-61) is reported at 521 F. 2d 87. The opinion of the district court (Pet. App. 63-113) is reported at 375 F.Supp. 1065.

JURISDICTION

The judgment of the court of appeals was entered on July 16, 1975 (Pet. App. 61). A petition for a writ of certiorari was filed on October 11, 1975, and was granted on May 24, 1976. The jurisdiction of this Court is conferred by 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether three Acts of Congress, which authorized the sale of land within portions of the Rosebud Indian Reservation to non-Indians and directed that the proceeds of each sale as received should be deposited in trust for the benefit of the Tribe, diminished the exterior boundaries of the Reservation as they existed in 1889.

STATUTES INVOLVED

The Acts of April 23, 1904, 33 Stat. 254; March 2, 1907, 34 Stat 1230; and May 30, 1910, 36 Stat. 448, are set forth in Appendix C to the petition.

STATEMENT

In June 1972, the Rosebud Sioux Tribe of Indians filed suit in the United States District Court for the District of South Dakota, seeking a declaratory judgment that the exterior boundaries of the Rosebud Reservation, as defined in the Act of March 2, 1889, 25 Stat. 888, had not been altered by three Acts of Congress (Act of April 23, 1904, 33 Stat. 254; Act of March 2, 1907, 34 Stat. 1230; Act of May 30, 1910, 36 Stat. 448) opening certain unallotted surplus land to non-Indian settlement.

In the Act of March 2, 1889, Congress "restored to the public domain" (25 Stat. 896) one-half of the Great Sioux Reservation established in 1868, but preserved for the Sioux Tribes six Reservations in present-day North and South Dakota (*id* at 888–890). Among these was the Rosebud Reservation, located in the south central portion of South Dakota, and com-

posed of the Counties of Todd, Tripp and Mellette, and parts of Gregory and Lyman counties.[1]

In 1901, the Rosebud Tribe agreed (Pet. App. 15, n. 21) to "cede * * * and convey to the United States" for a specified sum of $1,040,000 the unallotted land within the Gregory County portion of its Reservation for non-Indian settlement. Congress rejected this agreement in 1902 and 1903. The problem "was, simply put, money" (Pet. App. 16). Congress then "amended and modified" the agreement (Pet. App. 117) and enacted it as the Act of April 23, 1904 (Pet. App. 117–120). The primary amendments were that (1) the Indians were not guaranteed any consideration for the land except with respect to the 16th and 36th sections (school sections), but were to be paid only as the lands were actually sold to settlers;[2] (2) the United States did not guarantee to find purchasers but agreed only to "act as trustee for said Indians to dispose of said lands" (Section 6, Pet. App. 120); and (3) limitations were placed on the distribution of the proceeds to the Indians (compare Art. III, Pet. App. 118, with Art. III, Pet. App. 115–116).

The Rosebud Reservation was further opened by the 1907 Act, which, as passed, provided (Pet. App. 121) "that the Secretary of the Interior * * * is here-

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[1] A map of the Reservation, showing the 1889 boundaries and the boundaries as found by the court of appeals, is reproduced at Pet. App. 113.

[2] Section 2 of the Act (Pet. App. 119) set forth a schedule of the prices per acre for the land, which varied according to the time at which the land was sold.

by, authorized and directed, * * * to sell or dispose of all that portion of the Rosebud Indian Reservation * * * [within Tripp County] except such portions thereof as have been, or may hereafter be, allotted to Indians" (and except school sections that were to be paid for by the United States, and granted to the State).[3] The 1907 Act further provided (Section 5, Pet. App. 122–123) that the funds received should be deposited in an interest-bearing account in the Treasury of the United States "to the credit of the Indians belonging and having tribal rights on the Rosebud Reservation," that the interest shall be paid annually to the Indians, that all funds up to one million dollars should be distributed after ten years on a per capita basis to the Indians, and that the balance should be expended or distributed for the Indians' benefit at the discretion of the Secretary of the Interior. The 1907 Act concluded, as did the 1904 Act (Section 6, Pet. App. 120), with a section declaring (Section 8, Pet. App. 123):

> * * * nothing in this act contained shall in any manner bind the United States to purchase any portion of the land herein described, except sections sixteen and thirty-six or the equivalent in each township, or to dispose of said land except as provided herein, or to guarantee to find purchasers for said lands or any portion thereof, it being the intention of this act that the *United States shall act as trustee for said Indians to dispose of said lands and to expend and pay over the proceeds received from the sale thereof only as received, as herein provided* * * *. [Emphasis added.]

[3] Each Act contains substantially identical school land provisions to the effect that Sections 16 and 36 of the lands in each township are not to be disposed of, but are reserved for donation to the State for use as common schools. These lands were to be paid for by the federal government. See Pet. App. 120, 121, 123, 127.

The 1910 Act (Pet. App. 124–127), like the 1907 Act (Pet. App. 121), began with an authorization to the Secretary to "sell and dispose" of surplus lands within a described portion (Mellette County) of the Reservation (Pet. App. 124).[4] The Act further provided (*ibid.*)

> [t]hat any Indians to whom allotments have been made on the tract to be *ceded* may, in case they elect to do so before said lands are offered for sale, relinquish same and select allotments in lieu thereof on the diminished reservation * * *. [Emphasis added.]

The 1910 Act further required (Section 4, Pet. App. 125) that a commission be established, composed of "[o]ne resident citizen of the State of South Dakota, one representative of the Interior Department, and one person holding tribal relations with said tribe of Indians," to determine the price settlers would be charged for the land. The proceeds of any eventual sales were to be deposited in the Treasury to the credit of the "Indians belonging and having tribal rights on the said reservation," which "shall be at

[4] The 1907 Act uses the phrases "sell *or* dispose" (emphasis added).

all times subject to appropriation by Congress for their education, support, and civilization" (Section 7, Pet. App. 126). The 1910 Act (Section 11, Pet. App. 127), like the earlier Acts (Section 6, Pet. App. 120; Section 8, *id.* at 123), explicitly stated that the United States was not obligated to purchase the surplus land, except Sections 16 and 36 for school purposes, and would act only as trustee for the Indians in disposing of the surplus land.

In a lengthy opinion the district court held that each of the 1904, 1907 and 1910 Acts extinguished the portion of the Reservation to which it applied (Pet. App. 63–113; see *id.* at 113). The court found no language in the Acts expressly terminating the Reservation in the counties involved and no "express discussion of state versus federal jurisdiction over the lands in question" (*id.* at 85); however, the court held that, in light of the "surrounding legislative history and the circumstances" (*id.* at 109) from 1901 to 1910, Congress intended to extinguish the portions of the Reservation at issue.

The United States Court of Appeals for the Eighth Circuit affirmed (Pet. App. 1–61), after this Court had decided *DeCoteau* v. *District County Court*, 420 U.S. 425. The court rejected arguments of the Tribe, and the United States as *amicus curiae*, that the language of the Acts interpreted in light of prior decisions of this Court did not abolish the disputed portions of the Reservation, and that neither the legislative nor the administrative history established that the State had undisputed jurisdiction to the

exclusion of the Tribe and the United States. The court thought that prior decisions, including this Court's decisions in *Seymour* v. *Superintendent*, 368 U.S. 351, and *Mattz* v. *Arnett*, 412 U.S. 481, and its own decisions in *City of New Town, North Dakota* v. *United States*, 454 F. 2d 121, and *United States ex rel. Condon* v. *Erickson*, 478 F. 2d 684, were "of limited utility" in deciding this case (Pet. App. 5) and concluded that "the overriding judicial inquiry remains unchanged, namely, the congressional intent" (*ibid.*). Stating that this Court's decision in *DeCoteau*, *supra*, permitted it to utilize "all materials reasonably pertinent to the legislation * * * as well as those bearing upon the historical context of its passage, such as the social forces then at work in the area * * *" (Pet. App. 8), the court found a "continuity" of circumstances from 1901 to 1910 that demonstrated Congress' intention to extinguish Indian jurisdiction over the areas in question (*id.* at 26–28, 34, 38, 39–40, 44, 46, 48).

SUMMARY OF ARGUMENT

It is the position of the United States that the Acts of 1904, 1907, and 1910, while opening portions of the Rosebud Reservation to non-Indian settlers, did not contract the exterior boundaries of the Reservation. This position is based upon our assessment of the Acts themselves, the contemporary social and legislative history, subsequent treatment of the lands by the Department of the Interior, and doctrines developed by this Court in similar cases. While the courts below gave some attention to each of these

factors, we believe that the courts overemphasized inconclusive legislative history. A more balanced analysis, we submit, requires a finding that Congress did not intend by these Acts to terminate most of the Reservation but expected that termination would occur, if at all, when the trust period on allotments expired.

This Court's decisions require compelling evidence to prove that reservation boundaries have been cut back without the consent of the affected Indian tribe and without guaranteed payment for the opened lands. Any different construction would place Indians in the position of surrendering jurisdiction over substantial portions of their reservation before any benefits had been assured or received. Thus, the Court found in *Seymour* v. *Superintendent,* 368 U.S. 351, and *Mattz* v. *Arnett,* 412 U.S. 481, that unilateral Acts of Congress, providing that the United States would not purchase Indian lands but would merely act as trustee for their sale, did not commit the opened lands to state jurisdiction. The Acts opening the Rosebud Reservation were drafted in similar fashion and are to the same effect.

The Acts of 1904, 1907, and 1910, do not demonstrate an intention to return lands to the public domain, and the clear language of other Acts expressly restoring lands to the public domain is notably absent. In contrast to public lands, which are subject to disposition under general laws, the lands of the Rosebud Reservation were to be sold only in accordance with the terms of the trust established by Congress; all

proceeds were explicitly dedicated to the benefit of the Tribe. In fact, Congress included a provision granting school lands to the State in each Act, despite this Court's holding in 1902 that such provisions were unnecessary when lands were restored to the public domain. *Minnesota* v. *Hitchcock,* 185 U.S. 373.

Subsequent administrative actions confirm that the Acts did not disestablish the 1889 boundaries of the Reservation. Under the Indian Reorganization Act of 1934, 48 Stat. 984, as amended, 25 U.S.C. 461, *et seq.,* the Department of the Interior restored to Indian ownership lands in the opened portion of the Reservation, an action that could not have included lands "upon the public domain outside the geographic boundaries of any Indian reservation * * *" (48 Stat. 986). Moreover, numerous communications and reports show that the Department, before and after the Indian Reorganization Act, recognized territory in the opened counties as within the Rosebud Reservation. Recent appropriations are consistent with that viewpoint.

The uncertain legislative history does not demonstrate a contrary intention. Despite the emphasis placed on the legislative history by the court of appeals, the reports and debates show that Congress at no time concerned itself with the question of jurisdiction over the opened lands. While the court of appeals stressed references made in unrelated contexts, we submit that the inferences to be drawn from such references are at best ambiguous. They do not merit the weight that they received in the court of appeals.

The Acts of 1904, 1907, and 1910, therefore, do not demonstrate congressional intent to impede the Tribe's right to govern its own people.

ARGUMENT

I. THE DECISIONS OF THIS COURT HOLD THAT ACTS OF CONGRESS ESTABLISHING TRUSTS FOR THE SALE OF INDIAN LANDS DO NOT REDUCE RESERVATION BOUNDARIES

This Court, in deciding Indian cases, does not write upon a fresh slate. The Court has long recognized that "[t]he relation of the Indian tribes living within the borders of the United States * * * [is] an anomalous one and of a complex character." *United States* v. *Kagama*, 118 U.S. 375, 381. "Indian tribes *are* the wards of the nation. They are communities *dependent* on the United States." *Id.* at 383–384 (emphasis in original). With respect to legislation, therefore, "[d]oubtful expressions are to be resolved in favor of the weak and defenseless people who are the wards of the nation, dependent upon its protection and good faith." *Carpenter* v. *Shaw*, 280 U.S. 363, 367.

During the past fifteen years this Court has been asked three times to decide whether Congress intended to cut back reservation boundaries or to open up reservation lands for settlement with the existing boundaries unchanged. *Seymour* v. *Superintendent*, 368 U.S. 351; *Mattz* v. *Arnett*, 412 U.S. 481; *DeCoteau* v. *District County Court*, 420 U.S. 425. The principles developed by those decisions are directly applicable to the questions raised in this case.

In *Seymour*, this Court considered the effect of the Act of March 22, 1906, 34 Stat. 80, on the Colville Indian Reservation in the State of Washington. In 1892, the United States expressly vacated and restored a portion of the Reservation "to the public domain," 27 Stat. 62, 63. In the 1906 Act, however, no such language was included; the Secretary was merely directed "to sell or dispose" of unallotted lands within the Reservation (34 Stat. 80) and to place the proceeds as received from settlers into the Treasury for the benefit of the Indians (34 Stat. 81). The Act further provided that the United States would act as a trustee in disposing of these lands for the Indians' benefit and not as a purchaser (34 Stat. 82). Because *Seymour* involved a criminal matter, this Court assessed the meaning of the 1906 Act against the backdrop of the definition of "Indian Country" found in 18 U.S.C. 1151.[5]

This Court concluded that "the purpose of the 1906 Act was neither to destroy the existence of the diminished Colville Indian Reservation nor to lessen federal responsibility for and jurisdiction over the Indians having tribal rights on that reservation." 368 U.S. at 356. The Colville Act "did no more than open the way for non-Indian settlers to own land on the

[5] Indian country is defined, in part, as "all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights of way running through the reservation * * *."

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reservation in a manner which the Federal Government, acting as guardian and trustee for the Indians, regarded as beneficial to the development of its wards" (*ibid.*). The Court noted that any other conclusion would result in checkerboard jurisdiction over Indians, a consequence that Congress sought to avoid by enacting 18 U.S.C. 1151 (*id.* at 358).[6]

In *Mattz* this Court was required to decide whether the Klamath River Indian Reservation in California was terminated by an 1892 Act of Congress or remained Indian country as defined in 18 U.S.C. 1151 (412 U.S. at 483). After assessing legislative history and subsequent administration of the land by the Interior Department, the Court concluded, as it had in *Seymour,* that the mere opening of the Reservation to settlers did not mean that the Reservation was discontinued. Recognizing that "the House was generally hostile to continued reservation status of the land," the Court nonetheless found that Congress never terminated it (*id.* at 499)[7] but merely provided

[6] This Court took particular note of the subsequent treatment of this area by Congress and by the Interior Department, and gave particular attention to the Department's decision, 54 I.D. 559, that land within the Colville Reservation previously opened to settlement could be restored to Reservation status under the Indian Reorganization Act of 1934 (368 U.S. at 357, n. 14). This Court recognized a period of "congressional confusion" when the area was referred to as the "former Colville Reservation" (*id.* at 356, n. 12), but did not find such references indicative of a Congressional intent to terminate jurisdiction over the Reservation.

[7] The State urged that a reference in the 1892 Act to "what was [the] Klamath River Reservation," indicated a Congressional intention to terminate. This Court found the reference to the

for sale of the surplus lands with the "proceeds of sales to be held in trust for the 'maintenance and education' * * * of the Indians" (*id.* at 504). Because a decision to terminate a reservation "must be expressed on the face of the Act or be clear from the surrounding circumstances and legislative history" (*id.* at 505), this arrangement did not deprive the Indians of their important reservation rights.[8]

Placing the 1892 Act into the historic context of the General Allotment Act of 1887, 24 Stat. 388, the Court further observed that the Allotment Act "permitted the President to make allotments of reservation lands to resident Indians and, with tribal consent, to sell surplus lands. Its policy was to *continue the reservation system* and the trust status of Indian lands, but to allot tracts to individual Indians for agriculture and grazing. *When all the lands had been allotted and the trust expired, the reservation could be abolished*" (412 U.S. at 496; emphasis added). See also *United States* v. *Nice,* 241 U.S. 591, 599. However, enactment

Reservation "in the past tense * * * merely * * * a natural, convenient and shorthand way of identifying the land subject to allotment * * *" (*id.* at 498). Cf. *Seymour, supra,* 368 U.S. at 356, n. 12.

[8] After this Court's decision in *Seymour*, the Eighth Circuit considered whether the Act of May 29, 1908, 35 Stat. 460, opening the Cheyenne River Reservation in South Dakota, diminished its boundaries. Relying on *Seymour*, it held it did not, *United States ex rel. Condon* v. *Erickson*, 478 F. 2d 684 (C.A. 8), and this Court in *Mattz* twice noted that decision with approval, remarking that it presented "issues not unlike those before us" (412 U.S. at 497, n. 19 and 505, n. 23). The Eighth Circuit had reached a similar conclusion in *City of New Town, North Dakota* v. *United States*, 454 F. 2d 121, involving the effect of the Act of June 1, 1910, 36 Stat. 455, opening the Fort Berthold Reservation.

of the Indian Reorganization Act in 1934, 48 Stat. 984, as amended, 25 U.S.C. 461 *et seq.*, ended the policy of allotment, and all trust periods were indefinitely extended (412 U.S. at 496, n. 18). Later, as the Court noted, portions of the land in the Klamath Reservation previously opened to settlement were withdrawn and restored to tribal ownership (*id.* at 496, n. 17 and 505).[9]

In *DeCoteau*, the Court determined the effect of the Act of March 3, 1891, 26 Stat. 989, 1035, on the Lake Traverse Reservation. The 1891 Act had ratified an agreement in which the Tribe expressly ceded to the United States all its "right, title and interest" in the land for a lump sum. The Court contrasted this transaction with the Acts involved in *Seymour* and *Mattz* (420 U.S. at 447–449), stating that it "adhere[d] without qualification to both the holdings and the reasoning of those decisions"; the Court, however, found that "gross differences between the facts * * *" (*id.* at 447) justified a finding that the Reservation had been terminated.

The differences identified by the Court are important to the present case. The 1891 Act was a negotiated agreement with the Tribe, whereas the Acts involved in *Seymour* and *Mattz* were "unilateral" Acts of Congress not agreed to by the Tribes (*id.* at 448). The 1891 Act was a straightforward cession for a sum certain in amount, and not the arrangement found in *Mattz* and *Seymour* where proceeds from

[9] The Klamath River Reservation was also identified by the Interior Department (54 I.D. 559), as containing land, opened by the 1892 Act, which could be restored to reservation status.

uncertain future sales were placed in trust for the benefit of the Tribe (*id.* at 448–449). The Department of the Interior did not, as it had in *Mattz* and *Seymour*, consistently regard the Reservation as continuing (*id.* at 448).These distinctions led to the conclusion that the Lake Traverse Reservation was extinguished and the land restored to the public domain.

The fact that the Indians' land holdings would be diminished as the land was sold, therefore, does not mean that the Rosebud Reservation itself was abolished in the areas where the land subject to sale was located. In *DeCoteau* (but not in *Seymour* or *Mattz*) the United States itself purchased the land in the Reservation pursuant to an agreement with the Indians; this, the Court held, restored the land to the public domain and extinguished the Reservation. 420 U.S. at 445–447. But under the Rosebud Acts, the federal government did not buy the Indians' land. The government acted merely as a trustee for the Tribe in selling its land to non-Indians; the land passed from the Indians to private individuals. It was not first made part of the public domain, and Congress appropriated no funds to pay for these lands, except for school sections. Rather, any funds distributed to or deposited on behalf of the Indians were to be derived from amounts paid by the non-Indian purchasers. If there were no buyers interested in the land the government was to sell for the Indians, the Indians would have received no money; yet according to the reasoning of the court below, the Tribe nevertheless would have been deprived of three-fourths of its Reservation.

Such an intention should not be attributed to Congress without the clearest kind of evidence.

Every court faced with similar questions, except the courts below, has found that such Acts of Congress did not extinguish portions of the Reservations but instead opened the Reservations to allow integration of Indians and settlers and to provide needed lands for the western migration.[10] This construction is consistent not only with proper concern for Indian sovereignty but also with the long-standing reluctance to place Indian wards within the reach of state jurisdiction. "The policy of leaving Indians free from state jurisdiction and control is deeply rooted in the Nation's history." *Rice* v. *Olson,* 324 U.S. 786, 789.

Although the court of appeals found these principles "of limited utility" (Pet. App. 5), we believe they may not be so lightly dismissed.[11] While we do not read

[10] *Russ* v. *Wilkens*, 410 F. Supp. 579 (N.D. Cal.); *Leech Lake Band of Chippewa Indians* v. *Herbst*, 334 F. Supp. 1001 (D. Minn.); *City of New Town, North Dakota* v. *United States*, 454 F. 2d 121 (C.A. 8); *United States ex rel. Condon* v. *Erickson*, 478 F. 2d 684 (C.A. 8); *Putnam* v. *United States*, 248 F. 2d 292 (C.A. 8); *Confederated Salish and Kootenai Tribes* v. *Namen*, 380 F. Supp. 452 (D. Mont.), affirmed, 534 F. 2d 1376 (C.A. 9), pending on petition for certiorari, No. 76–185.

[11] The court of appeals apparently misunderstood (Pet. App. 24–25) the significance of the fact that Congress did not secure the approval of the Rosebud Indians as required by the Treaty of 1868 (15 Stat. 635, 639). While Congress had the power to dispose of lands without such consent, *Lone Wolf* v. *Hitchcock*, 187 U.S. 553, its decision to do so must be regarded as unilateral. In fact, the government's negotiator, Inspector James McGlaughlin, repeatedly stressed to the Indians that their lands could be sold without their consent and that they should redirect their efforts to securing a reasonable price. *E.g.*, A. 476, 481, 490, 776, 803–804.

the cases to say that Congress could never remove lands from a reservation by a unilateral decision to act as trustee for their sale, that construction should be greatly disfavored. This is particularly true when, as here, Congress demonstrated quite clearly that it did not intend to place the Indian lands within the public domain.

II. THE ACTS OF 1904, 1907 AND 1910 DID NOT RESTORE INDIAN LANDS TO THE PUBLIC DOMAIN

The United States does not dispute that Congress during the early 1900's expected that Indian reservations at some point would be abolished. Congress was faced with pressures to open additional land located within existing Indian reservations and Congress itself desired that Indians gradually develop a less tribal way of life. The integration of Indians with white settlers was viewed as an important step in that development. The question in this case, therefore, is not whether Congress intended the Rosebud Reservation to continue unchanged indefinitely but whether termination was to occur immediately upon passage of the Acts or at some later time, when the trust period on allotted Indian lands had expired.

1. The language of the Acts themselves does not disclose an intent to return land to the public domain. The 1904 Act provides for the Indians to "cede, surrender, grant and convey to the United States all their claim, right, title and interest in and to all that part of the Rosebud Indian Reservation now remaining unallotted [within Gregory County]" (Pet. App. 115), but that terminology was simply carried over from the un-

ratified agreement for sale at a sum certain. The 1904 Act nowhere provides that the Reservation was abolished or that the lands were to be restored to the public domain. The Acts of 1907 and 1910 provide that the Secretary of the Interior shall "sell or dispose" (in the 1907 Act) or "sell and dispose" (in the 1910 Act) "of all that portion of the Rosebud Indian Reservation" subsequently described (Pet. App. 121, 124). Again no mention is made that the Reservation is *pro tanto* terminated or that the lands were to become public lands. This reticence is in marked contrast to the express language used by Congress in other statutes. See 15 Stat. 221 (1868) ("the Smith River reservation is hereby discontinued"); 27 Stat. 63 (1892) ("the same being a portion of the Colville Indian Reservation * * * be, and is hereby, vacated and restored to the public domain"); 33 Stat. 218 (1904) ("the reservation lines of the said Ponca and Otoe and Missouria Indian reservations be, and the same are hereby, abolished"). See also *Mattz* v. *Arnett, supra,* 412 U.S. at 504, n. 22.[12]

The mere fact that the government had power to sell the Indians' lands does not mean that they are public lands. "The words 'public lands' are habitually

[12] The language of the 1904 Act is similar to the statutory language discussed in *DeCoteau, supra,* and found sufficient to terminate the Reservation. But Congress had *ratified* a sale for a sum-certain in that case, and the words of cession in that context merely reflected the common understanding of the Indians and the government. The words in this case were originally part of a similar agreement, which Congress refused to ratify. Although Congress retained the form of the agreement in passing the 1904 Act, the language disappeared in the Acts of 1907 and 1910, both of which were passed without tribal consent.

used in our legislation to describe such as are subject to sale or other disposal under general laws." *Newhall* v. *Sanger,* 92 U.S. 761, 763. The United States commonly owns public lands free of beneficial rights and may dispose of them for its own benefit. Its power over the Rosebud Reservation lands, however, was significantly different; under the Acts of 1904, 1907, and 1910, the United States could sell the lands only under specified conditions and was required to administer the proceeds for the benefit of the Rosebud Indians. Unlike agreements providing for sale for a sum-certain, the three Acts in question specifically stated that the United States did not guarantee to buy, or even to find purchasers for, the affected lands. In fact, part of the lands was later released from the trust in accordance with the Indian Reorganization Act of 1934 (pp. 28–33, *infra;* App. A, *infra,* p. 1A).

The provision for school lands in each of the three Acts indicates that Congress was aware of the nature of this trust. In May 1902, this Court, in *Minnesota* v. *Hitchcock,* 185 U.S. 373, had considered the troublesome question whether a cession-in-trust to the government for resale gave Minnesota the right to Sections 16 and 36 of the ceded lands for school purposes.[13]

[13] Congress was well aware of the importance of *Minnesota* v. *Hitchcock.* After the Department of the Interior moved to dismiss the State's original action in this Court, on the ground that the Chippewa Indians were indispensable parties, Congress passed an Act expressly permitting the Interior Department to appear instead of the tribe in such cases. Act of March 2, 1901, 31 Stat. 950. The Committee Report on the bill (H.R. 14191) stated that "it is of the utmost consequence * * * that there be the most speedy determination of a vexed question that has dragged through forty years" (H.R. Rep. No. 2948, 56th Cong., 2d Sess. 1 (1901)).

(The Enabling Act admitting Minnesota to the Union, like the Enabling Act for South Dakota, provided that the State was entitled to Sections 16 and 36 from all "public lands" within the State for schools.) This Court concluded that, while Minnesota would be entitled to Sections 16 and 36 of public lands even though no express exception in the instrument of conveyance was made (185 U.S. at 392–393), the land in question had never been restored to the public domain because the cession was in trust and the proceeds from uncertain future sales were to be deposited in the Treasury for the Indians' benefit (185 U.S. at 395). Thus Congress, if it wanted the State to receive Sections 16 and 36 while they remained within the opened Indian reservation, had to include an express provision to that effect. Such provisions were contained in all three Rosebud Acts.[14]

The legislative history of these provisions, though sparse, is instructive. In 1902, bills were introduced to ratify the Agreement negotiated with the Tribe in the previous year. The bill reported to the Senate, in addition to supporting approval of the Agreement, proposed an additional provision not originally negotiated: the inclusion of a requirement reserving Sections 16 and 36 in each township in Gregory County "for the use of the common schools" and granting those

[14] A school lands provision was also contained in the Act of March 3, 1891, 26 Stat. 989, 1035, extinguishing the Lake Traverse Reservation. At that time, of course, this Court had not held that a State would be entitled to school sections out of public lands by the force of its Enabling Act alone, and Congress therefore included an express grant even in Acts providing for purchase of lands for a sum certain.

sections to the State of South Dakota. S. Rep. No. 662, 57th Cong., 1st Sess. 1–2 (1902). The bill was passed in the Senate, but the House Committee on Indian Affairs rejected not only the provisions permitting free-homesteads but also the school lands provision, stating (H.R. Rep. No. 2099, 57th Cong., 1st Sess. 1 (1902)).

> The opinion of the committee is that this section is *not necessary,* as under *existing law* sections 16 and 36 would be granted to the State upon the extinguishment of the Indian title. [Emphasis added.]

The bill never reached the House floor for a vote (Pet. App. 16, n. 23).[15] When the Agreement for a sum certain was abandoned, however, subsequent bills included an express grant for school lands.

[15] The 1901 Agreement was an outright cession of Gregory County for a sum certain, which the Tribe conceded below would have extinguished the reservation status of the land and restored it to the public domain (Pet. App. 16). See *DeCoteau* v. *District Court, supra*, 420 U.S. at 447–449. The House Indian Affairs Committee understood that, under such circumstances, it was *not* necessary expressly to reserve Sections 16 and 36 for school purposes because the South Dakota Enabling Act of 1889 provided that those sections would automatically revert to the State when Indian title was extinguished. See 25 Stat. 676, 679, Section 10. The Senate Committee Report, supporting inclusion of the provision, was issued in March 1902, *before* this Court's decision in *Minnesota* v. *Hitchcock, supra.* The House Report was issued on May 17, 1902, after the *Hitchcock* decision. Congress "must be deemed to have known" that the exact issue it was dealing with was resolved by this Court in *Hitchcock. Federal Power Commission* v. *Tuscarora Indian Nation*, 362 U.S. 99, 113. It was the House Report that accurately reflected existing law.

The court of appeals mistakenly relied (Pet. App. 29) on statements made by Senator Gamble in 1902 in favor of a school lands

The question arose again in connection with the Act of 1910. Although the school lands provision was included in that Act without substantial debate, a similar provision in a bill to open lands in the Fort Berthold Reservation, North Dakota, was more fully discussed. The Fort Berthold bill, described as "practically in the same form" as the 1910 Rosebud Act (45 Cong. Rec. 5794 (1910)), provided for sales according to the uncertain-sum-in-trust method, except for Sections 16 and 36 which were to be purchased by the United States. After discussion of the school lands provision, Senator Jones of Washington stated (45 Cong. Rec. 6741 (1910)):

> I think I am thoroughly familiar with the terms of these various bills, and I am satisfied that these lands are *not restored to the public domain at all.* Their disposition is provided for in a special way. *The title of the Indians is recognized, and the lands are sold for the Indians.* They are to have the benefit.
>
> I am not going to object to the bill, and I am not going to object to the provisions in it, but I did want to put in the RECORD my judgment that we are under *no obligation to purchase section 16 and 36, because we are not restoring these surplus lands to the public domain.* [Emphasis added.]

provision without noting that others regarded the provision as unnecessary. The court then juxtaposed those statements with statements made in 1904 (Pet. App. 30) after the sum certain method of payment had been discarded. The latter statements in fact simply emphasize the need to include school lands provisions when the uncertain-sum-in-trust method of payment is used.

Senator Jones clearly recognized that the 1910 Fort Berthold Act, which was "practically in the same form" as the 1910 Rosebud Act, did not restore any lands to the public domain, and that Congress chose voluntarily to include a grant of school lands to provide schools in the opened territory.[16] The Eighth Circuit has held that the 1910 Fort Berthold Act did not diminish the exterior boundary of that Reservation. *City of New Town, North Dakota* v. *United States,* 454 F. 2d 121. It is highly unlikely that Congress would have intended a different result in substantially identical legislation passed within the same month.

2. There is also no reason to believe that these lands, not restored to the public domain by Acts of Congress, were nevertheless restored by issuance of the Presidential proclamations opening the lands for settlement. At that point, the trust was still in full effect and the Indians had yet to receive any benefits under the particular Acts. Lands unsold or forfeited were to be restored to the Indians (presumably through the trust) and would not have been available for sale under the general laws. Thus they bear little resemblance to public lands.

This conclusion is fortified by *Ash Sheep Co.* v. *United States,* 252 U.S. 159. In 1899, the United States had negotiated an agreement with the Crow Tribe, by which the Tribe agreed to "cede, grant and

[16] Since the opened areas were to be populated largely by white settlers, this action seems consistent with the purpose of the school lands provisions in the States' Enabling Acts.

relinquish" to the United States, for a lump sum, a portion of its reservation in Montana, 33 Stat. 352–356. In 1904, however, the Congress unilaterally "amended and modified" the unratified 1899 Agreement to include an uncertain-sum-in-trust provision, 33 Stat. 361 (Section 6), and a trusteeship provision, 33 Stat. 361 (Section 8), while retaining the "cede, grant, and relinquish" language of the 1899 Agreement. The land was opened by Presidential Proclamation in 1906, 34 Stat. (Part III) 3200, and "[m]uch thereof ha[d] been disposed of * * *." *United States* v. *Ash Sheep Co.,* unpublished opinion, Brief of the United States as Amicus Curiae in Support of Petition for Hearing and Rehearing en Banc, p. 66 (filed in the court of appeals).

In 1913, the Ash Sheep Company sought to graze sheep on unallotted lands opened for settlement without compliance with Interior Department regulations, claiming that the Act of 1904 had diminished the Reservation and converted the land affected into "public land." This Court disagreed, stating (252 U.S. at 165–166):

> It is obvious that the relation thus established by the act between the Government and the tribe of Indians was essentially that of trustee and beneficiary and that the agreement contained many features appropriate to a trust agreement to sell lands and devote the proceeds to the interests of the *cestui que trust. Minnesota* v. *Hitchcock,* 185 U.S. 373, 394, 398. * * *
>
> Taking all of the provisions of the agreement together we cannot doubt that while the Indians

> by the agreement released their possessory right to the Government, the owner of the fee, so that, as their trustee, it could make perfect title to purchasers, nevertheless, until sales should be made any benefits which might be derived from the use of the lands would belong to the beneficiaries and not to the trustee, *and that they did not become "Public lands"* in the sense of being subject to sale, or other disposition, under the general land laws. *Union Pacific R.R. Co.* v. *Harris,* 215 U.S. 386, 388. They were subject to sale by the Government, to be sure, but in the manner and for the purposes provided for in the special agreement with the Indians, which was embodied in the Act of April 27, 1904, 33 Stat. 352 * * *. [Emphasis added.]

Thus, the Presidential Proclamation of 1906 clearly had not converted the Indian lands into public lands outside the Reservation.

Furthermore, a bill (S. 4632) to give settlers additional time to make payments on lands within various North and South Dakota Reservations (including the Rosebud) was introduced and considered in the Sixty Third Congress in 1914. 51 Cong. Rec. 8790 (1914). During the House debate of May 18, 1914, the consequences of non-payment by the settlers was discussed (51 Cong. Rec. 8791 (1914)):

> Mr. FOSTER: I want to say to the gentleman from South Dakota, on the statement he makes that these lands will probably go back to the Government, and that these people are really in distress—

Mr. MANN: The Government does not own these lands?

Mr. BURKE of South Dakota: *The Government does not own them.* The Government is undertaking to dispose of these lands for the benefit of the Indians.

Mr. FOSTER: Certainly. I understand.

Mr. BURKE of South Dakota: *And instead of giving money to the Indians, under the agreement of 1889,* so far as these reservations in South Dakota are concerned, *the money goes into the Treasury,* and we appropriate it for the support and civilization of the Indians. [Emphasis added.]

The point was also emphasized later in the debate (*ibid.*):

Mr. FOSTER: * * * if at the end of the time they do not desire to pay for them, the land goes back to the Government.

Mr. MANN: *The land goes back to the Indians.* [Emphasis added.]

3. We believe that Congress expected by the Acts in question "to continue the reservation system and the trust status of Indian lands, but to allot tracts to individual Indians for agriculture and grazing. When all the lands had been allotted and the trust expired, the reservation could be abolished." *Mattz* v. *Arnett*, *supra*, 412 U.S. at 496. While it might have been possible to diminish the reservation *pro tanto* as each plot of land was actually sold, that system seems both illogical and impractical. Under such circumstances Indians could not be sure from day-to-day what lands remained within the Reservation (and thus on what lands they became subject to state jurisdiction, see

U.S. Department of Interior, *Federal Indian Law* 510–511 (1958)), and jurisdiction could only be exercised in checkerboard fashion according to local plat books. That cumbersome system should not be readily implied. *Seymour* v. *Superintendent, supra,* 368 U.S. at 358. Furthermore, the risk of forfeitures was always present given South Dakota's climate; the difficulties would only be increased as land, previously sold and removed from the Reservation, reverted to the trust upon nonpayment. Finally, the Indians living on the opened portion might be denied benefits available to Indians living on a Reservation.

By contrast, preserving the Reservation until the trust allotments expired would present fewer problems. The acquisition of land would not be impeded, for the settlers would own their land in the same manner and would be generally subject to state civil and criminal jurisdiction. *United States* v. *McBratney,* 104 U.S. 621; *New York ex rel. Ray* v. *Martin,* 326 U.S. 496. The taxable base for the State and counties would be expanded, relieving the burdens of a locality previously inhabited largely by non-taxable Indians. At the same time, the Indians living on allotments would continue to receive needed federal benefits. While the State, of course, would not have jurisdiction over Indians on the Reservation, extension of State control over Indians has not generally been favored. *Rice* v. *Olson, supra.* This viewpoint is also consistent with treatment of the Reservation by the Department of the Interior, as we next discuss.

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III. THE DEPARTMENT OF THE INTERIOR HAS ADMINISTERED THE ROSEBUD RESERVATION IN ACCORDANCE WITH THE BOUNDARIES ESTABLISHED IN 1889

Although the State of South Dakota has asserted dominion over the opened portions of the Rosebud Reservation, the territory within the original boundaries of 1889 has been recognized and administered as a Reservation by the Department of the Interior.

1. The process of alienating "surplus" Indian lands pursuant to the allotment policy ended with the passage of the Indian Reorganization Act of 1934 (48 Stat. 984). *Mattz* v. *Arnett, supra,* 412 U.S. at 496, n. 18. Under Section 3 of that Act, the Secretary of the Interior was authorized "to restore to tribal ownership the remaining surplus lands of any Indian Reservation heretofore opened * * *," 48 Stat. 984, and under Section 7, he was authorized to proclaim "new Indian reservations * * * or to add such lands to existing reservations." 48 Stat. 985. Congress made clear, however, that "[n]othing contained in this Act shall be construed to relate to Indian holdings of allotments or homesteads *upon the public domain outside the geographic boundaries* of any Indian reservation now existing or established hereafter" (48 Stat. 986; Section 8) (emphasis added).

The legislative history of the Act establishes that its provisions were directed particularly to "opened" portions of reservations. John Collier, Commissioner of Indian Affairs, whose agency was largely responsible for drafting the original bills, testified:[17]

[17] Hearings on S. 2755 before the Senate Committee on Indian Affairs, 73d Cong., 2d Sess. 18 (1934).

> There have been presented to the House Indian Committee numerous land maps showing the condition of Indian-owned lands on allotted reservations. The Indian-owned lands are parcels belonging (a) to allottees and (b) to the heirs of deceased allottees. Both these classes of Indian-owned land are checker-boarded with white-owned land already lost to the Indians, and on many reservations the Indian-owned parcels are mere islands within a sea of white-owned property.

Before the House Committee Commissioner Collier testified[18]:

> * * * Alienation under allotment takes place in a spotty way *throughout the entire area within the reservation.* Indian land is not lost in solid blocks. It passed into white hands in scattered parcels which increased year by year until the remaining Indian lands are checker-boarded by white lands. *In many areas they have shrunk to mere dots on the map surrounded by large areas of white land.*

After passage of the Indian Reorganization Act of 1934 the unexpired trust period on all land allotted to Indians within reservations was indefinitely extended. The Secretary of the Interior was required to identify those Acts that "opened" portions of Indian Reservations but did not convert those lands into "public domain" (54 I.D. 559). The Secretary noted that many reservation lands had been ceded for a sum certain and concluded that "[t]he lands thereby separated

[18] Hearings on H.R. 7902 before the House Committee on Indian Affairs, 73d Cong., 2d Sess. 30–31 (1934) (emphasis added).

from a reservation were no longer looked upon as being a part of that reservation" (54 I.D. at 560.) However, the Secretary determined that a second type of disposition did not extinguish the Indian title and convert the land into public domain (*ibid.*):

> * * * [A]bout 1890 * * * there was adopted the plan of opening to entry, sale, etc., the lands of reservations that were not needed for allotment, the Government taking over the lands only as trustee for the Indians. Under this plan the Indians were to be credited with the proceeds only as the lands were sold, the United States not to be bound to purchase any portion of the lands so opened. Undisposed of lands of this class remain the property of the Indians until disposed of as provided by law (*Ash Sheep Company* v. *United States,* 252 U.S. 159). Such lands are usually referred to as surplus lands of Indian reservations opened to public entry, and undoubtedly comprise the class of lands from which restorations to tribal ownership are to be made under the said Section 3, if in the public interest.[19]

[19] Respondents' discussion of a 1938 opinion by the Acting Solicitor (56 I.D. 330), concerning the Colorado Ute Reservation. Reply Brief for Respondents' in Opposition, pp. 26–27, takes an opposite viewpoint, relying on language that "[t]he phrase 'of any Indian reservation' must be used in section 3 to describe the character and location of the lands at the time they were opened to disposal under the public land laws," 56 I.D. at 333. No mention is made, however, of the language in Section 8 that "[n]othing contained in this Act shall be construed to relate to Indian holdings of allotments or homesteads upon the public domain outside the geographic boundaries of any Indian reservation now existing or established hereafter." That qualification, read in conjunction with Section 3, indicates that the only lands governed by the

The Secretary then proceeded to identify "a list of Indians to receive the proceeds of sale only as the reservations where the lands have been opened, the tracts are disposed of" (54 I.D. at 561).[20] In addition to the three Rosebud Acts of 1904, 1907 and 1910 (*id.* at 562), the Secretary listed some twenty-six other reservations.[21] While those reservations have been the source of continual litigation, not one court has ever held that the Indian title to the land affected was extinguished by the applicable Act of Congress and the

Indian Reorganization Act were lands located within an Indian reservation that were opened but not restored to the public domain. Such lands, as the Court held in *Seymour* and *Mattz*, were not removed from Indian and federal jurisdiction.

Moreover, the lands at issue in the Colorado Ute case did not contain any Indian allotments. Three bands of Utes occupied this Reservation prior to 1880; each was permitted to select allotments within the Reservation before it was opened by the 1880 Act, but because little arable land was available, the Uncompahgre and White River Utes were "voluntarily" removed to Utah. The Southern Utes were the only band to remain, and they selected allotments in the southern portion of the Reservation where the arable lands were located, *Ute Indians* v. *United States*, 45 Ct. Cl. 440, 449, leaving the northern portion unallotted. The discussion by the Acting Solicitor, therefore, must be read in the context of these unusual facts. See also *Confederated Bands of Ute Indians* v. *United States*, 100 Ct. Cl. 413, 423, 424–430.

[20] Approximately one month later, a supplemental order was issued which included additional reservations. It stated that (*id.* at 564) "as to those townsites any part of which remains unsold within such areas, it is hereby recommended that said order * * * be construed to apply to the extent of temporarily withholding from other disposition any unsold lots or portions of any such townsites * * *."

Thus, even townships, which by the 1930's would be populated by numerous non-Indians, were encompassed by this Interior Department order.

[21] See cases cited, note 10, *supra.*

land converted to public domain. In fact, when the question presented was whether the reservation boundaries continued to exist undiminished in size, each court decided that they had.

On December 3, 1937, the Assistant Commissioner of Indian Affairs recommended to the Secretary of the Interior that, pursuant to Section 3 and Section 7 of the Indian Reorganization Act, certain undisposed surplus lands "of the Rosebud Reservation, South Dakota" should be restored to tribal ownership.[22] (App. A, *infra*). These lands included vacant

[22] The Secretary had previously approved the Constitution and Bylaws of the Rosebud Sioux Tribe (App. B, *infra*), pursuant to Section 16 (48 Stat. 987) of the Indian Reorganization Act. That section provides that "[a]ny Indian tribe, or tribes, residing on the same reservation, shall have the right to organize for its common welfare, and may adopt an appropriate constitution and bylaws * * *." Article 1 of the Constitution defined the Tribe's jurisdiction as "the territory within the original confines of the Rosebud Reservation boundaries as established by the act of March 2, 1889, and to such other lands as may hereafter be added thereto under any law of the United States, except as otherwise provided by law." The Rosebud Sioux Tribe has had a law and order system since 1877, supported by Congressional appropriations. 19 Stat. 254, 257 (Art. 9). Its police force was organized in 1879, *Report of Commissioner of Indian Affairs*, 1879, p. 40, and the extensive nature of its law and order system was recognized by this Court in *Ex parte Crow Dog*, 109 U.S. 556. See also *Report of Commissioner of Indian Affairs*, 1881, p. 54. Congress authorized the establishment of Tribal Courts in 1888, 25 Stat. 233, and the Rosebud law and order system continued to function thereafter. *Report of Commissioner of Indian Affairs*, 1897, p. 277 and *Report of Commissioner of Indian Affairs*, 1890, p. 381. After the approval of the Tribal Constitution in 1935, the Tribal Government was reorganized, and the Tribe has continued to exercise jurisdiction throughout the 1889 Reservation over Tribal members. See App. C, *infra*.

lands totaling some 4,649.25 acres, and also "remaining vacant and undisposed * * * lots within the townsites of Wamblee, Witten and Wewela, in the opened portion of the said Rosebud Reservation, which townsites were established by the Department, pursuant to authority contained in the Act of March 2, 1907, *supra.*" *Id.* at 2A. The lands encompassed by this recommendation were in Tripp County, opened by the 1907 Act. On January 12, 1938, the Secretary issued an "Order of Restoration," restoring these lands to the Tribe (App. D, *infra*).[23]

2. Other actions confirm this view of the Rosebud Reservation as administered by the Department of the Interior. Department officials have repeatedly treated lands within Mellette, Tripp, Gregory and Lyman Counties, located within the 1889 Reservation boundaries, as reservation lands. This treatment belies the viewpoint of the court of appeals that Todd County alone has constituted the Rosebud Reservation since 1910.

For example, in 1909, the Department, not having sold portions of the surplus lands made available by the 1904 Act to homesteaders, offered the re-

[23] On August 20, 1964, the Congress placed in trust status certain federal lands "on the Rosebud-Sioux Reservation," which included tract E. ½ of Section 35, T. 42 N., R. 33 W, 6th P.M. in Mellette County. 78 Stat. 560.

Restoration orders, comparable to the 1938 Rosebud Order, were issued for the Colville Reservation, pursuant to a Congressional directive, 70 Stat. 626 (1956), *Seymour* v. *Superintendent*, *supra*, 368 U.S. at 356, and the Klamath River Reservation, *Mattz* v. *Arnett*, 412 U.S. at 496, n. 17 and 505.

mainder for sale at public auction. In a letter dated February 8, 1909, to the Commissioner of the General Land Office, the Secretary stated (37 I.D. 442–443):

> It is directed that *all that part of the Rosebud Indian reservation in Gregory County,* South Dakota, opened to settlement and entry by the act of April 23, 1904 (33 Stat. 254), which had not been entered prior to August 8, 1908, will be offered for sale * * *. [Emphasis added.]

The Department used similar language in 1913, directing sale of the lands opened by the 1907 Act:

> Sir: It is directed that all that *part of the Rosebud Indian Reservation in Tripp County,* South Dakota, opened to settlement and entry by the act of March 2, 1907 (34 Stat. 1230), which had not been disposed of on April 1, 1913, will be offered for sale at public auction * * * [42 I.D. 292].

Communications between Department officials are to the same effect. In April 1913, the Acting Commissioner of Indian Affairs, C. F. Hauke, submitted to the Superintendent of the Rosebud School a request for a report on the possible consequences of reorganizing the administrative structure of the Reservation. C.A. App. IV, Doc. 41.[24] Replying to the request, the Superintendent discussed, among other things, the status of Indian allotments in the various districts (or counties) opened for settlement. He stated (App. IV, Doc. 42, p. 4):

> *These two Districts* [Little White River and Black Pipe (both in Mellette County)] are the

[24] As used in this brief, "C.A. App." refers to the appendix filed in the court of appeals.

> most troublesome of any of the Districts *on the Reservation.* The Bad Lands are located largely in these Districts which makes it difficult to go from place to place on account of the bad roads. The Cut Meat District [Todd County] has about 1,332 allotments with 299,120 acres, and a few over 1,000 Indians to look after. While it seems to be a large District, still there is but very little leasing of our Indian lands or allotments, *it being in the closed portion of our Reservation,* and the allotments are more compact with small farms in the District. The Agency has some over 1,200 Indians to look after, and is one of the largest Districts, but the farmer is assisted materially by being located in the Agency. [Emphasis added.][25]

That same year, the Supervisor of Industries and Agriculture for the Rosebud Reservation submitted a report to the Indian Office in Washington, D.C., regarding his inspection of portions of the Reservation. He stated (C.A. App. IV, Doc. 44, pp. 1–2):

> The reservation is divided into farmers' districts, and I believe an honest effort is being made to induce the Indians to farm; * * * In the *Ponca District* [Gregory and Tripp counties] *at the east end of the reservation* there is a Teacher in Charge residing at the Milk's Camp Day School. His duties are exactly the same as those of the additional farmers.

[25] This correspondence shows that the distinction between "closed" and "opened" portions of the Reservation is that non-Indians were formally permitted by Congress to enter the Reservation in one portion (*i.e.*, "opened") while not others (*i.e.*, "closed"). Both parts, however, were administered as the Rosebud Reservation.

> Practically all of the day school teachers have been raising good gardens for a considable time. * * * Except in the *Ponca District* [Gregory and Tripp counties] *at the east end of the reservation,* which is a farming district, I do not consider the Rosebud country a farming country. [Emphasis added.]

Moreover, the Report of May 13, 1914, from the Supervisor at Rosebud to the Honorable Cato Sells, Commissioner of Indian Affairs (App. IV, Doc. 51, p. 3), states:

> The [Rosebud] *reservation* is divided into seven farmer districts, each presided over by a farmer paid at a rate of $900 per annum, except the *Ponca district* [Gregory and Tripp counties] in the *extreme eastern end of the reservation,* which is presided over by a teacher-in-charge at $1000 per annum. [Emphasis added.]

Thus, the contemporaneous view of the Department officials was that the reservation boundaries were not changed by the Acts of 1904, 1907 and 1910.

More recently, in 1939, the Division of Forestry and Grazing of the Rosebud Reservation forwarded to the Commissioner of Indian Affairs a "map of the Rosebud Indian Reservation showing different types of roads" and identifying important landmarks regarding the location of the roads (*e.g.*, schools, fire look-out stations) (App. E, *infra*). The letter identifies roads and trails constructed by either the County or the Indian Service in Mellette, Tripp, Lyman and Gregory Counties; the location of new schools in Black Pipe (Mellette); the location of fire look-out tower sites in Cedar Butte (Mellette); and the construction of government and private telephone lines in Mellette and Tripp Counties. These facilities all were considered part of the Reservation.

In 1942, the Interior Department's Fish and Wildlife Service undertook a wildlife survey on the Reservation in order to assist the Tribe in managing their resources (App. F, *infra*). The Report on the survey was completed in August 1942 and transmitted to the Commissioner of Indian Affairs in September. The Report contains this description of the Rosebud Reservation (*id.* at 39A–40A):

> The *entire reservation* is included in Tripp, Gregory, Mellette, and Todd Counties, and covers a gross area of 3,555,833 acres. Alienated white lands total 2,468,888 acres of this area. Most of the field work was conducted on the *so called* "Diminished Reservation" in Todd County. This area, including alienated land, totals approximately 894,080 acres. Much of this is checkerboarded although there are some large solid blocks of Indian land. The largest percentage of the diminished reservation is Indian owned. Approximately 7,000 Indians are enrolled in the tribe. [Emphasis added.]

The Bureau of Indian Affairs continued, prior to this law suit, to administer all five counties as part of the Rosebud Reservation. From 1969 through 1974 requests for Congressional appropriations were based on population statistics which included all Indians living within the exterior boundaries of the 1889 Reservation, and clearly distinguished those from a

lesser number living off, but near the Reservation.[26] Various social services were provided to Indians living in all these counties, including child welfare and burial assistance; a BIA outpatient clinic is located in Mellette and Tripp Counties; and housing was provided by BIA or Tribal funding since 1963. Moreover, the Department of Housing and Urban Development, which makes grants only where a tribe has authority to act as a "governmental entity" or "public body" (42 U.S.C. 1460(h)), has been providing financial assistance to the Tribe (Memorandum of the United States as Amicus Curiae supporting petition for certiorari, p. 11). See also Opinion of the Field Solicitor on the exterior boundaries of the Rosebud Reservation in 1972 (C.A. App. IV, Doc. 56).

The agency responsible for administering the Rosebud Reservation, therefore, has generally regarded the original reservation boundaries as unchanged by the Acts of 1904, 1907, 1910. That understanding is entitled to more weight than it was accorded by the court of appeals, *Mattz* v. *Arnett, supra,* 412 U.S. at 505, and, we believe, is more instructive than the ambiguous legislative history discussed in the following section.

IV. THE LEGISLATIVE HISTORY SHOWS THAT CONGRESS DID NOT CONSIDER QUESTIONS OF JURISDICTION AND IS THEREFORE OF MARGINAL BENEFIT IN THIS CASE

The court of appeals gave primary, if not conclusive, weight to the legislative history of the three

[26] See App. A, Brief of the United States as *Amicus Curiae* in the court of appeals below.

Acts (Pet. App. 9–60).[27] While legislative history may be useful in these inquiries, *DeCoteau, supra,* 420 U.S. at 444–445, we do not believe the history in this case merits the emphasis it enjoyed below. For Congress, in passing these three Acts, at no time addressed the question of jurisdiction. Page after page of the legislative history shows that Congress was concerned with *land* not *jurisdiction.* Thus, that history is at best a slender reed on which to support extinction of most of the Rosebud Reservation.

During the early 1900's there was no reason for Congress to be greatly concerned about jurisdiction. The principal reason for opening the Rosebud Reservation, as the court of appeals recognized (Pet. App. 9, 34, 44), was the desire of settlers for land. This desire was compatible with the interests of States having great reservations within their boundaries, who sought a broader tax base through increased land ownership by non-Indians (*e.g.,* A. 276). Both objectives could be accomplished either by purchase for a lump sum or by purchase through the uncertain-sum-in-trust method. At the same time, the Indians would be exposed to new, presumably more civilized, ideas that would hasten their assimilation into our culture. As that assimilation occurred, and the trust period on allotted lands gradually expired, the Reservations could be abolished. *Mattz, supra,* 412 U.S. at 496.

[27] A law journal article, written in part by present counsel for South Dakota, had previously reviewed the legislative history in some detail and urged the result reached below. Comment, *New Town et al.: The Future of an Illusion,* 18 S.D. L. Rev. 85 (1973).

The debates reflect Congress' lack of attention to jurisdictional matters. Throughout the consideration of these three Acts, Congress discussed the desirability of the lands, the method of payment, the price to be paid by settlers, the need for school lands provisions, and many other matters, but not once addressed the issue of criminal and civil jurisdiction within the opened Reservation.[28] Although the court of appeals relied on scattered remarks that suggest abolition of the Reservation, these remarks are necessarily taken from discussions on different subjects and are often contradicted by other references of a similar nature. While exhaustive citation is not necessary, a brief review of materials not cited by the courts of appeals should demonstrate the uncertainty surrounding the legislative history in this case.

1. The view of the legislative history taken by the court of appeals proceeds from the assumption that the Acts of 1904, 1907, and 1910 were extensions of the unratified 1901 Agreement (Pet. App. 22, 23, 25,

[28] Jurisdiction is mentioned, albeit tangentially, in the debate on the liquor provision in the 1910 Act. That provision made all land in Mellette County subject to the liquor laws applicable in "Indian Country." Although the courts below suggested that the provision would be unnecessary if the Reservation were continued (Pet. App. 56–58, 102–103), that suggestion is erroneous. As the debates show, 45 Cong. Rec. 5460–5464 (1910), members of Congress were fully aware of this Court's decision in *In re Heff*, 197 U.S. 488, holding that Indian allottees were subject to *state* liquor laws. While opponents of the provision believed that state jurisdiction was sufficient, supporters noted that dependency on state liquor laws presented a grave risk to Indian well-being (45 Cong. Rec. 5460–5464 (1910)). Thus federal control was expressly continued for twenty-five years, the trust period on Indian allotments, at which time abolition of the Reservation could be considered.

38, 40, 48). Although we agree that the 1901 Agreement and the three Acts had a common purpose of providing Indian lands to white settlers, the differences between them merit further attention.

In 1901, the Rosebud Sioux Tribe agreed by a three-fourths majority of the adult male population to "cede, surrender, grant, and convey to the United States all their claim, right, title, and interest" in all that part of the Reservation located in Gregory County, South Dakota, remaining unallotted, in return for a lump sum payment of $1,040,000 (Pet. App. 14 and 15, n. 21). This agreement, which was negotiated by the Interior Department's Inspector, James McLaughlin, was to be effective "when accepted and ratified by the Congress of the United States" (*id.* at 15)." That ratification of course never occurred.

Three years later, after several previous bills had failed to pass, a new bill was introduced which unilaterally "amended and modified" the 1901 Agreement. The primary amendments were that (1) the Indians were not guaranteed a lump sum consideration, except for Sections 16 and 36 (school sections), but were to be paid as lands were actually sold (Section 6, Pet. App. 120); (2) the United States did not guarantee to find purchasers but agreed only to "act as trustee for said Indians to dispose of said lands" (Section 6, Pet. App. 120); and (3) limitations were placed on the distribution of the proceeds to the In-

[29] Approval of three fourths of all the adult male Indians, before an agreement was considered valid, was required by the Treaty of 1868, 15 Stat. 635, 639 (Art. XII) (Pet. App. 14, n. 20).

dians (compare Art. III, Pet. App. 118 with Art. III, Pet. App. 115–116). In addition, the 1904 bill eliminated any reference to tribal consent by three-quarters of the male adults, and included a provision granting Sections 16 and 36 to the State for common school purposes (Section 4, Pet App. 120). It was enacted on April 23, 1904, 33 Stat. 254.[30]

Although the court of appeals stated that "[t]he 1904 Act, incorporating the entire text of the 1901 Agreement (save for the lump-sum provision) passed under the circumstances [previously discussed], was obviously an outgrowth of and a continuation of the objectives of the 1901 Agreement" (Pet. App. 25), that conclusion, while technically correct, is misleading. The 1901 Agreement itself does not evidence a specific intention to cut down reservation boundaries; at most, that intention could be presumed from the bilateral nature of the agreement and by the provisions for outright purchase of the lands for an indicated sum. *DeCoteau, supra.* That presumption is unavailing, however, once the nature of the agreement and the method of payment are changed. The objective of securing new lands for non-Indian settlers surely was continued, but that is not material to the question of jurisdiction over the settled lands.

2. The court of appeals also proceeded on the assumption that the terms "reservation" and "diminished reservation" had one settled, precise meaning

[30] Despite these numerous and material changes the court of appeals somehow concluded that the 1904 Act "amended the 1901 Agreement solely with respect to the method of payment" (Pet. App. 23).

throughout the legislative history. Thus, the court relied heavily on various references to the "reservation" and the "diminished reservation" (Pet. App. 12, 13, 14, 26–28, 39, 40–41, 44, 45, 51–52, 54, 57, 58, 59) to show that the exterior boundaries of the Rosebud Reservation had been cut back. Consideration of similar references in the legislative history, however, indicates that the terms were often used in shorthand fashion without the precision that the court of appeals supposed.

For example, the term "diminished reservation," as used in the 1910 Act, appears to include not only Todd County (the closed portion) but also Mellette County (the portion to be opened). The May 30, 1910 Rosebud Act provides in part, 36 Stat. 449 (Section 1):

> [A]ny Indians to whom *allotments* have been made *on the tract to be ceded* [Mellette County] may, in case they elect to do so *before* said lands are offered for sale, relinquish same and select allotments in lieu thereof on the *diminished reservation* * * *. [Emphasis added.]

Section 2 of the Act, however, directs the Secretary to dispose of the unallotted lands in Mellette County after a presidential proclamation, provided (*ibid*):

> That prior to said proclamation the *allotments within the portion* of the said Rosebud Reservation *to be disposed of* [Mellette County] as prescribed herein shall have been completed * * *. [Emphasis added.]

Since the Indians could select new allotments in Mellette County prior to the presidential proclamation, as well as in Todd County, "diminished reserva-

tion" seems to refer not merely to the closed portion of the Reservation but to the "'area of the reservation * * * diminished in size by reason of the settlement of the unalloted lands by non-Indians.'" *Putnam* v. *United States,* 248 F. 2d 292, 295 (C.A. 8). In *United States ex rel. Condon* v. *Erickson,* 478 F. 2d 684, 687 (C.A. 8), the court of appeals recognized that a similar use of the term could mean that "the reservation * * * retained its original exterior boundaries even though the portion held by Indians was diminished by virtue of the sale of lands within the boundaries to outsiders." The court then continued: "Indeed, this would be consistent with 18 U.S.C. § 1151 defining Indian Country as lands within the limits of a reservation *notwithstanding the issuance of any patent*" (*ibid.;* emphasis in original).[31]

[31] In a November 12, 1910, letter regarding the 1910 Act, the Assistant Commissioner of Indian Affairs stated (C.A. App. IV, Doc. 40B):

"The diminished reservation,—that is, the lands remaining *after* the allotments [to Indians] and sale of lands [to homesteaders] referred to, *will consist of about 40 townships,* which may be used to provide allotments until such time as there are no unallotted lands therein." [Emphasis added.]

In 1910 Mellette County consisted of 837,125 acres (36 full townships) and a number of irregularly sized townships. Thousands of these acres had already been allotted to Indians *prior* to the opening, and could not "be used to provide allotments * * *" *after* the opening. To find "about 40 townships" available for allotment, therefore, it would be necessary go beyond Mellette County.

In 1911, a few months after Mellette County was opened to settlement, there existed in Todd County less than 220,000 acres that could "be used to provide allotments * * *" to Indians, S. Rep. No. 1166, 62d Cong., 3d Sess. 4 (1913), the remainder having long since been allotted or reserved for agency and school purposes. The remaining 700,000 acres referred to by the Assistant Commissioner appears to have been an estimate from existing Department records of the land remaining throughout the entire 1889 Reservation for the purpose of allotment, "diminished" by the lands already allotted to Indians or occupied by homesteaders.

At other times, "diminished reservation" seems to mean only the closed portion of the Reservation. The Report prepared by the Fish and Wildlife Service in 1942 (App. F, *infra,* at 39A), for example, states that "[t]he entire [Rosebud] reservation is included in Tripp, Gregory, Mellette, and Todd Counties," and notes that "[m]ost of the field work was conducted on the so called 'Diminished Reservation' in Todd County." This is the same portion of the Reservation that the Superintendent of Rosebud School described as "the closed portion of our Reservation * * *" (*supra,* p. 35).

Construction of the term "reservation" also leads in various directions. While some references to the Rosebud "reservation" appear compatible with the court of appeals' analysis, other references do not. Thus, within a year after the 1904 Act was passed, the homesteaders in Gregory County petitioned Congress for an extension of time to establish their residence upon lands opened to settlement. The Senate and House Committee Reports both refer to the lands in question as "*lands within the confines of that part of the Rosebud Indian Reservation* thrown open to entry * * *" (emphasis added). H.R. Rep. No. 4198, 58th Cong., 3d Sess. (1905); S. Rep. No. 2760, 58th Cong., 3d Sess. (1905) And, after describing the need for the legislation in light of bad climatic conditions

causing delays in payments by homesteaders, the Senate Committee Report states (*id.* at 2):

> A further fact which influences the committee in making a favorable report is that these settlers are under conditions different to those affecting the ordinary homestead settler. Entrymen on the reservations in question have to pay $4 an acre in the case of the Rosebud Reservation * * *.

This legislation became law on February 7, 1905, 33 Stat. 700.

On March 3, 1909, Congress enacted an appropriation for the Indian Department for the fiscal year ending June 30, 1910. 35 Stat. 781. Under Section II of the Act, Congress made appropriations for reservations within various states, including South Dakota. 35 Stat. 808. Additionally, Congress authorized the Secretary to permit the establishment of catholic missions "on the Rosebud Reservation." 35 Stat. 809. The missions were to be located as follows (*ibid.*):

> *On the Rosebud Reservation,* at or near Saint Francis Mission * * *; also, at or near Red Leaf Camp * * *; also, at or near Oak Creek * * *; also, at or near Antelope Creek * * *; also, at or near Little White River * * *; *also, at or near Ponca Creek.* [Emphasis added.]

Ponca Creek is located in Gregory County, opened by the Act of 1904.

In 1911 Congress had before it a bill for relief of settlers in the area opened by the Act of 1907. Representative Stephens, who called up the bill, described it as a "bill (H.R. 13044) extending the time of payment to certain homesteaders in the Rosebud and other Indian reservations in South and North Dakota * * *" (47 Cong. Rec. 3840 (1911)) and then stated (*id.* at 3841):

> Mr. Speaker, we have gone at some length into the question of the great drought-stricken country of the West in the bill which has already passed the House and we have shown the House beyond all question that a severe drought has extended all over the West, including South Dakota. *The Rosebud Reservation, where these lands are situated,* is now, in the main, in the hands of settlers * * *. [Emphasis added.]

The bill became law on April 17, 1911, 37 Stat. 21.

In 1918, Mr. Gandy, a representative from South Dakota, introduced a bill (H.R. 12082) "authorizing the sale of certain lands in South Dakota for cemetery purposes." 56 Cong. Rec. 6469 (1918). The bill was referred to the Committee on Indian Affairs, which reported (H.R. Rep. No. 742, 65th Cong., 2d Sess. 1 (1918)):

> This is a bill to authorize the sale of 10 acres of tribal land *on Rosebud Indian Reservation in Mellette County S. Dak., and belonging to the Rosebud Tribe of Indians,* to the White River Cemetery Co. * * * It is provided that the Secretary of the Interior shall sell the land * * * and that the money received shall be deposited in the Treasury of the United States to the credit of the Rosebud Tribe of Indians. [Emphasis added.]

In the following year, during debate on a bill to pay for fire damages on the Todd County portion of the Rosebud Reservation, 58 Cong. Rec. 4933 (1919),

Mr. Gandy observed that "[t]he Rosebud Reservation embraces about 7,000 square miles." However, Todd County, which the Eighth Circuit found to be the *only* portion of the original Rosebud Reservation remaining in 1919, is less than 1,500 square miles (approximately 800,000 acres). The 1889 Rosebud Reservation, undiminished in size, is in excess of 5,000 square miles (3,228,160 acres).

In December 1940, the Town of White River, located in Mellette County, South Dakota, sought approval from the Federal Power Commission for construction of an electric power line across Indian lands. The FPC notified the Town that if "tribal Indian lands are to be crossed * * * prior approval of the proper reservation authorities" was required (App. G, *infra,* p. 41A). The FPC then notified the Secretary of the Interior that the "Town of White River, South Dakota, has filed with the Commission an application for license * * * affecting lands of the United States within the Rosebud Indian Reservation" (App. G, *infra,* p. 42A.) Thus, both the Town of White River and the FPC acknowledged that power line construction in Mellette County would affect lands within the Reservation and was subject to approval of "reservation authorities."

In June, 1941, the United States filed a Declaration of Taking in the United States District Court for the District of South Dakota, in order to acquire land "for the use of the United States of America, * * * in connection *with the Two Kettle Project on the Rosebud Indian Reservation* in South Dakota * * *" (App. H, *infra,* pp. 44A, 50A) (emphasis

added.) The lands acquired were described by the District Court as (*id.* at 50A)

> * * * containing 610.10 acres of land, more or less, *in Mellette County,* South Dakota, designated as Tract No. 189 of the Two Kettle Project *on the Rosebud Indian Reservation* [Emphasis added.]

The District Court entered its Findings of Fact and Conclusions of Law, as well as its final judgment, on December 12, 1941 (*id.* at 44A).

In 1945 Senator Bushfield, a Senator from South Dakota, introduced a bill (S. 1564) directing the Secretary of the Interior to issue a fee patent to Shadrick Ponca, a Rosebud Sioux Indian. The relevant Committee Report stated (S. Rep. No. 1442, 79th Cong., 2d Sess. 1 (1946)):

> Shadrick Ponca, is the sole heir of his deceased mother, Millie or Wing Ponca, who bequeathed to him her allotted lands *on the Rosebud Indian Reservation, S. Dak., described in this bill, which lands are situated in Gregory County, S. Dak.,* a distance of more than 50 miles from applicant's home in the village of Okreek, in Todd County, S. Dak., where applicant, Shadrick Ponca, lives in his own home * * *.[32]

Two years later, Senator Bushfield asked the Commissioner of Indian Affairs for a report on the application of Charlotte Gordon Odden for a patent in

[32] The bill was passed by the Senate on June 14, 1946, 92 Cong. Rec. 6920, introduced into the House, 92 Cong. Rec. 7120, and referred to the House Committee on Indian Affairs. 92 Cong. Rec. 7399–7400. There was no further action during the 79th Congress, and although the South Dakota Senator introduced it again in the 80th Congress, 93 Cong. Rec. 3219 (1947), it did not become law.

fee covering her allotment in Tripp County, South Dakota. The Commissioner stated in his letter of August 21, 1947 (App. I, *infra*):

> Receipt is acknowledged of your letter of August 11 about Mrs. Charlotte Gordon Odden's application for a patent in fee covering her 160-acre allotment, No. 4248, *on the Rosebud Reservation, described as* the SW 1/4 sec. 11, T. 96N., R. 74W., 5th P.M., *Tripp County, South Dakota.* [Emphasis added.]

The inconsistency in these references is not surprising in view of the fact, discussed previously, that Congress did not squarely face the question of jurisdiction over the opened lands; other more controversial matters claimed its attention. It is inappropriate, therefore, to select certain statements from the mass of ambiguous materials and draw inferences from these, as the courts below did.[33] Read in its

[33] We also think the court of appeals misapprehended the significance of the fact that non-Indians and Indians live within the Reservation and utilize State and Federal facilities or benefits. Neither fact is inconsistent with the continued existence of the Rosebud Reservation. Only 19% of the Flathead Tribe live within the Flathead Reservation in Montana, *Confederated Salish and Kootenai Tribes* v. *Namen*, 380 F. Supp. 452, 457, n. 5 (D. Mont.), and considerable expenditures by both the State and Federal governments within the area provide benefits to all residents. *Confederated Salish and Kootenai Tribes* v. *Moe*, 392 F. Supp. 1297, 1313–1314 (D. Mont.). Similarly, the entire City of Tacoma, Washington, is within an Indian Reservation (Brief of the United States as Amicus Curiae in Support of Petition for Rehearing and Rehearing en Banc, p. 95 (filed in court of appeals); see also *United States* v. *Washington*, 496 F. 2d 620 (C.A. 9), certiorari denied, 419 U.S. 1032), and this Court recognized the presence of non-Indians within the Colville Reservation. *Seymour* v. *Superintendent*, *supra*, 368 U.S. at 358–359. This pattern represents nothing more than the logical consequence of Acts "opening" Indian reservations to white settlement around the turn of the century.

entirety, the legislative history does not show a clear intent to cut back the Reservation boundaries.

CONCLUSION

For the foregoing reasons, the judgment of the Court of Appeals for the Eighth Circuit should be reversed.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.
PETER R. TAFT,
Assistant Attorney General.
H. BARTOW FARR,
Assistant to the Solicitor General.
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NEIL T. PROTO,
Attorneys.

SEPTEMBER 1976.

APPENDIX A

DECEMBER 3, 1937.

The Honorable, the SECRETARY OF THE INTERIOR.

(Through the Commissioner of the General Land Office).

MY DEAR MR. SECRETARY: There are transmitted herewith the files of this Office relative to the proposed restoration to tribal ownership of all lands which are now, or may hereafter be, classified as undisposed-of surplus opened lands of the Rosebud Reservation, South Dakota.

Section 3 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), provides, in part, that:

> "The Secretary of the Interior, if he shall find it to be in the public interest, is hereby authorized to restore to tribal ownership the remaining surplus lands of any Indian reservation heretofore opened, or authorized to be opened, to sale, or any other form of disposal by Presidential proclamation, or by any of the public-land laws of the United States: Provided, however, That valid rights or claims of any persons to any lands so withdrawn existing on the date of the withdrawal shall not be affected by this Act.

Section 7 of that Act provides, in part, that:

> "The Secretary of the Interior is hereby authorized to proclaim new Indian reservations on lands acquired pursuant to any authority conferred by this Act, or to add such lands to existing reservations.

By Presidential proclamations of May 13, 1904 (33 Stat. 2234), August 24, 1908 (35 Stat. 2203), and

June 29, 1911 (37 Stat. 1691), under authority contained in the acts of Congress approved April 23, 1904 (33 Stat. 254), March 2, 1907 (34 Stat. 1230), and May 30, 1910 (36 Stat. 448), respectively, all lands within the Rosebud Reservation, with the exception of Todd County, were opened to settlement and entry under the provisions of the homestead and townsite laws of the United States, and of the said acts of Congress.

The Commissioner of the General Land Office has submitted a schedule from which it appears that there are at the present time remaining vacant and undisposed of, approximately 4,649.25 acres of such lands. It is possible that the said vacant area will increase to a small extent due to relinquishments and cancellations which may affect homestead entries that have not yet been completed.

A detailed report submitted from the field shows that all of the vacant surplus lands are of such a character and so located that they would be of no value for the purpose of homestead entry, and are primarily valuable for use in connection with Indian grazing activities only. Some of the tracts are now within or adjacent to established Indian grazing Units and other tracts may later be included in such units.

There are also remaining vacant and undisposed of a number of lots within the townsites of Wamblee, Witten and Wewela, in the opened portion of the said Rosebud Reservation, which townsites were established by the Department, pursuant to authority contained in the Act of March 2, 1907, supra.

The townsite of Wamblee originally embraced the NW/4 of Section 34, Twp. 102 N., R. 74 W., 5th P.M., South Dakota. Under date of March 31, 1917, the Secretary of the Interior approved the recommendations of this Office, whereby Departmental order of February 8, 1909, reserving the above described tract for townsite purposes, was modified and amended so as to exclude from such reservation all that portion of the said tract designated as Blocks 1 to 5, 12 to 20, 29 to 36 and 45 to 52, inclusive, together with the intervening streets and alleys. The tract so excluded is more particularly described in the recommendation approved March 31, 1917, supra, and was set aside for administrative purposes as a farm station under the Rosebud Indian Agency.

The Superintendent of the Rosebud Reservation reports that Wamblee, now known as Hamill, South Dakota, is far from being a prosperous town; that its streets are unpaved; that it has no municipal lighting, water facilities, etc., and that at least six vacant blocks within this townsite are adjacent to and could be used in connection with the above mentioned farm station. The Superintendent further states that if these lots were restored to the tribe that it might prove of benefit to the tribe and to the community of Indians in using this land to settle and to provide homes for those without land or other property, as the location is within a rather well settled Indian community. Information furnished by the Commissioner of the General Land Office indicates that the vacant lots in this townsite are with few exceptions located in a contiguous body adjacent to the farm station, as above stated.

The townsite of Witten embraces the N/2 of Sec. 21, Twp. 100 N., R. 78 W., 5th P.M., South Dakota. From information furnished by the Commissioner of the General Land Office it appears that a great number of lots within the townsite remain unsold and that in several instances there are a number of entire blocks vacant and in a fairly compact body. The

Superintendent of the reservation states that this town is at present practically abandoned; that on building a railroad into this part of the country the location was laid out approximately two miles south of the townsite and that a new town by the same name sprang in the NW/4 of Sec. 33 of the same township. It is further stated that all permanent business, new homes, and improvements are on the new location. The Superintendent recommends that most of the blocks that have not been sold might well be put to use in resettling landless Indians in this locality.

The townsite of Wewela embraces the SW/4 of Sec. 25, Twp. 95 N., R. 76 W., 5th P.M., South Dakota. Information furnished by the General Land Office shows that a large proportion of the area of the townsite remains vacant and unsold. The report of the Superintendent states that this also is a small country town without municipal improvements; that a number of Indian families live in the vicinity; that the use of unsold town blocks and lots by Indians would undoubtedly help the Indian situation in this locality, in relieving the use of public funds for their support, and that it would increase the size of the community and naturally somewhat the business of the town.

Both the Tribal Council and the Superintendent of the Rosebud Agency have given consideration to the disposition to be made of the vacant, opened lands of the reservation, including unsold lots in the townsites above named, and have recommended that they be restored to the tribe. This Office concurs in the said recommendations.

There is transmitted herewith a draft of an order, so drawn as to provide for the permanent restoration of tribal ownership, for the use and benefit of the

Rosebud Sioux Tribe of Indians of the Rosebud Indian Reservation in the State of South Dakota, of all lands which are now or may hereafter be, classified as undisposed-of, surplus, opened lands of the Rosebud Indian Reservation, together with all unsold lots in the townsites of Wambleo, Witten and Wewala, and that the said vacant lands be added to and made a part of the existing reservation, subject to any valid existing rights. It is respectfully recommended that the matter be given favorable consideration.

Sincerely yours,

(Signed) WILLIAM ZIMMERMAN, Jr.,
Assistant Commissioner.

7-OL-6

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE
Washington, D.C.

DEC. 27, 1937.

There are no reasons appearing in the records of this Office why the foregoing recommendation should not be approved.

(Signed) D. K. PARROTT,
Acting Assistant Commissioner.

DEPARTMENT OF THE INTERIOR
Washington, D.C.
JAN. 12, 1938.

JAN. 12, 1938.

APPROVED By
(Signed) HAROLD L. ICKES,
Secretary of the Interior, and all papers returned to the Bureau.

APPENDIX B

CONSTITUTION AND BYLAWS OF THE ROSEBUD SIOUX TRIBE OF SOUTH DAKOTA

PREAMBLE

Under and by virtue of our Creator and His divine providence, we the enrolled members of the Rosebud Sioux Tribe of Indians of the Rosebud Indian Reservation in the State of South Dakota, in order to establish a united tribal organization, to establish justice, to insure tranquility and enjoy the blessings of freedom and liberty, to conserve our tribal property, to develop our common resources, and to promote the best welfare of the present generation and our posterity, in education and industry, do hereby adopt and establish this constitution and by-laws.

ARTICLE I—TERRITORY

The jurisdiction of the Rosebud Sioux Tribe of Indians shall extend to the territory within the original confines of the Rosebud Reservation boundaries as established by the act of March 2, 1889, and to such other lands as may hereafter be added thereto under any law of the United States, except as otherwise provided by law.

ARTICLE II—MEMBERSHIP

SECTION 1. Membership of the Rosebud Sioux Tribe shall consist as follows:

(a) All persons of Indian blood, including persons born since December 31, 1920, whose names appear on the official census roll of the tribe as of April 1, 1935.

(b) All children born to any member of the Rosebud Sioux Tribe who is a resident of the reservation at the time of the birth of said children.

SEC. 2. The Tribal Council shall have power to promulgate ordinances, subject to review by the Secretary of the Interior, covering future membership and the adoption of new members.

ARTICLE III—GOVERNING BODY

SECTION 1. The governing body of the Rosebud Sioux Tribe shall consist of a council known as the Rosebud Sioux Tribal Council.

SEC. 2. The council shall be elected for a term of two years, by secret ballot. Each community of the reservation, as follows, shall be entitled to representation on the tribal council, according to population, as hereinafter provided:

1. Ringthunder
2. Spring Creek
2. He Dog
4. Black Pipe
5. Swift Bear
6. Butte Creek
7. Bad Nation
8. Okreek
9. Bull Creek
10. St. Francis
11. Brass Mountain
12. Two Strike
13. Parmelee
14. Upper Cut Meat
15. Corn Creek
16. Horse Creek
17. White Thunder
18. Little Crow
19. Ideal
20. Ponca
21. Upper Ponca
22. Soldier Creek

SEC. 3. The tribal council shall have authority to make changes in the foregoing list according to future

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community needs, subject to the approval of the Secretary of the Interior.

SEC. 4. Each recognized community shall elect representatives to the tribal council, in the proportion of one representative for each two hundred fifty (250) members or a remainder of more than one hundred twenty-five (125), provided that each recognized community shall be entitled to at least one representative.

SEC. 5. No person shall be a candidate for membership in the tribal or community council unless he shall be a resident member of the Rosebud Sioux Tribe and shall have been affiliated for a period of one year next preceding the election, with the community of his candidacy.

SEC. 6. Each community shall have power, by popular vote, to fill any vacancy which may occur in its representation on the tribal council.

SEC. 7. The Rosebud Sioux Council may elect from within or without its number a president, a vice-president, a secretary, a treasurer, and a sergeant-at-arms, and such other officers as it may from time to time desire.

SEC. 8. The Rosebud Sioux Tribal Council shall be the sole judge of the constitutional qualifications of its own members.

SEC. 9. The first election of councilmen under this constitution shall be held on call of the present council, within thirty (30) days after its ratification and approval. Prior to the first election of the tribal council the membership of each community shall be determined by the superintendent and a committee consisting of one delegate from each community herein designated. Thereafter, the membership of the various communities shall be determined by the communities, subject to review by the tribal council.

SEC. 10. Elections for the tribal council shall thereafter be called not less than thirty (30) days prior to the expiration of the term of office of the members of the council.

ARTICLE IV—POWERS OF THE ROSEBUD SIOUX TRIBAL COUNCIL

SECTION 1. *Enumerated powers.*—The council of the Rosebud Sioux Tribe shall exercise the following powers, subject to any limitations imposed by the statutes of the Constitution of the United States or of the State of South Dakota, and subject further to all express resrictions upon such powers contained in this constitution and attached by-laws.

(a) To negotiate with the Federal, State, and local Governments on behalf of the tribe and to advise and consult with the representatives of the Interior Department on all activities of the Department that may affect the Rosebud Sioux Reservation.

(b) To employ legal council for the protection and advancement of the rights of the tribe and its members, the choice of council and filing of fees to be subject to the approval of the Secretary of the Interior.

(c) To approve or veto any sale, disposition, lease, or encumbrance of tribal lands, interests in lands or other tribal assets which may be authorized or executed by the Secretary of the Interior, the Commissioner of Indian Affairs, or any other qualified official or agency of Government: *Provided,* that no reservation lands shall ever be leased for a period exceeding five years, sold or encumbered, except for governmental purposes.

(d) To advise the Secretary of the Interior with regard to all appropriation estimates or Federal projects for the benefit of the tribe prior to the submission

of such estimates to the Bureau of the Budget and to Congress.

(e) To make assignments of tribal land to members of the tribe in conformity with article VIII of this constitution.

(f) To manage all economic affairs and enterprises of the tribe in accordance with the terms of a charter which may be issued to the tribe by the Secretary of the Interior.

(g) To appropriate for public purposes of the Rosebud Sioux Tribe available tribal council funds, and subject to review by the Secretary of the Interior, any other available tribal funds.

(h) To levy taxes upon members of the tribe and to require the performance of reservation labor in lieu thereof, and to levy taxes or license fees, subject to review by the Secretary of the Interior, upon non-members doing business within the reservation.

(i) To exclude from the restricted lands of the reservation persons not legally entitled to reside therein, under ordinances which shall be subject to review by the Secretary of the Interior.

(j) To enact resolutions or ordinances not inconsistent with article II of this constitution governing the adoption and abandonment of membership.

(k) To promulgate and enforce ordinances, which shall be subject to review by the Secretary of the Interior, governing the conduct of members of the tribe, and providing for the maintenance of law and order and the administration of justice by establishing a reservation court and defining its duties and powers.

(l) To purchase lands of members of the tribe for public purposes, under condemnation proceedings in courts of competent jurisdiction.

(m) To safeguard and promote the peace, safety, morals, and general welfare of the tribe by regulating the conduct of trade and the use and disposition of property upon the reservation, provided that any ordinance directly affecting non-members of the tribe shall be subject to review by the Secretary of the Interior, and provided further that non-restricted property of members which was obtained without any help or assistance of the Government or the tribe may be disposed of without restrictions.

(n) To charter subordinate organization for economic purposes and to regulate the activities of all cooperative associations of members of the tribe.

(o) To regulate the inheritance of property, real and personal, other than allotted lands, within the territory of the reservation, subject to review by the Secretary of the Interior.

(p) To regulate the domestic relations of members of the tribe.

(q) To provide for the appointment of guardians for minors and mental incompetents by ordinance or resolution subject to review by the Secretary of the Interior.

(r) To exchange and foster the arts, crafts, traditions, and culture of the Sioux.

(s) To regulate the manner of making nominations and holding elections for tribal offices.

(t) To adopt resolutions regulating the procedure of the council itself and of other tribal agencies and tribal officials.

(u) To delegate to subordinate boards or tribal officials, to the several communities, or to cooperative associations which are open to all members of the tribe any of the foregoing powers, reserving the right to

review any action taken by virtue of such delegated power.

SEC. 2. *Manner of review.*—Any resolution or ordinance which, by the terms of this constitution, is subject to review by the Secretary of the Interior, shall be presented to the superintendent of the reservation, who shall, within ten (10) days hereafter, approve or disapprove the same.

If the superintendent shall approve any ordinance or resolution, it shall thereupon become effective, but the superintendent shall transmit a copy of the same, bearing his endorsement, to the Secretary of the Interior, who may, within ninety (90) days from date of enactment, rescind the said ordinance or resolution for any cause, by notifying the reservation council of such decision.

If the superintendent shall refuse to approve any resolution or ordinance submitted to him, within ten (10) days after its enactment, he shall advise the Rosebud Sioux Council of his reasons therefor. If these reasons appear to the council insufficient, it may, by a majority vote, refer the ordinance or resolution to the Secretary of the Interior, who may, within ninety (90) days from the date of its enactment, approve the same in writing, whereupon the said ordinance or resolution shall become effective.

SEC. 3. *Future Powers.*—The tribal council may exercise such further powers as may in the future be delegated to the tribe by the Secretary of the Interior, or by any duly authorized official or agency of the State or Federal Government.

SEC. 4. *Reserved powers.*—Any rights and powers heretofore vested in the Rosebud Sioux Tribe but not expressly referred to in this constitution shall not be abridged by this article, but may be exercised by the

people of the Rosebud Sioux Tribe through the adoption of appropriate bylaws and constitutional amendments.

ARTICLE V—COMMUNITY ORGANIZATION

Each community established under this constitution shall elect, annually, a president and such other officers as may be advisable, The president shall call and preside over popular meetings of the community whenever necessary for the consideration of matters of local interest. The various communities may consult with representatives of the Interior Department on all matters of local interest and make recommendations thereon to the tribal council or the superintendent or Commissioner of Indian Affairs, may undertake and manage local enterprises for the benefit of the community, may levy assessments upon members of the community, may expend moneys in the community treasury for the benefit of the community, may keep a roll of those members of the tribe affiliated with the community, and may exercise such further powers as may be delegated to the communities by the tribal council. The actions of the community councils shall not be inconsistent with the constitution, by-laws, and ordinances of the tribe.

ARTICLE VI—ELECTIONS

SECTION. 1. The individuals qualified to vote from and after approval of this constitution and by-laws shall be any adult enrolled Rosebud Sioux who has maintained a residence for ninety (90) days prior to the election on the Rosebud Indian Reservation.

SEC. 2. The council or boards appointed by it shall have power to certify to the election of any member

and this should be done within five (5) days after the election.

Article VII—Removal From Office

Section 1. Any member of the tribal council who is convicted of a felony or of any other offense involving dishonesty during his term of office shall automatically forfeit his office.

Sec. 2. The tribal council may, by a two-thirds vote, expel any member for neglect of duty or gross misconduct, after due notice of charges and an opportunity to be heard.

Article VIII—Land

Section 1. Allotted lands, including heirship lands, within the Rosebud Reservation shall continue to be held as heretofore by their present owners. It is recognized that under existing law such lands may be condemned for public purposes, such as roads, public buildings, or other public improvements, upon payment of adequate compensation, by any agency of the State of South Dakota or of the Federal Government, or by the tribe itself. It is further recognized that under existing law such lands may be inherited by the heirs of the present owner, whether or not they are members of the Rosebud Sioux Tribe. Likewise it is recognized that under existing law the Secretary of the Interior may, in his discretion, remove restrictions upon such land, upon application by the Indian owner, whereupon the land will become subject to State taxes and may then be mortgaged or sold. The right of the individual Indian to hold or to lose his land, as under existing law, shall not be abrogated by anything contained in this constitution, but the owner

of restricted land may, with the approval of the Secretary of the Interior, voluntarily convey his land to the Rosebud Sioux Tribe either in exchange for a money payment or in exchange for an assignment covering the same land or other land, as hereinafter provided.

Sec. 2. Tribal lands of the Rosebud Reservation and all lands which may hereafter be acquired by the Rosebud Tribe or by the United States in trust for the Rosebud Tribe shall be held as tribal lands, and no part of such lands shall be mortgaged or sold.

Sec. 3. Tribal lands shall not be allotted to individual Indians, but such tribal lands as are not required for school, agency, or other administrative use may be assigned by the tribal council to members of the Rosebud Tribe or may be leased or otherwise used by the tribe as hereinafter provided for.

Sec. 4. Tribal lands may be leased by the tribal council with the approval of the Secretary of the Interior in accordance with law. Preference shall be given, first, to Indian cooperative associations, and, secondly, to individual Indians who are members of the Rosebud Tribe. No lease of tribal lands to a nonmember shall be made by the tribal council unless it shall appear that no Indian cooperative association or individual member of the tribe is able and willing to use the land and to pay a reasonable fee for such use; provided, no individual member of the tribe or cooperative association shall be given any preference as to the use of tribal land unless the stock of such individual member or association is restricted stock and bears the ID brand.

Sec. 5. In any assignment of tribal lands, preference shall be given to heads of families which are entirely landless. Assignments under this section shall be known as "home assignments" and shall be granted

for the purpose of giving opportunity to homeless Indians for establishing a home. Any assignment under this provision shall not exceed ten (10) acres in area.

SEC. 6. If any person holding a "home assignment" of land shall for a period of six months fail to use the land so assigned or shall use the land for any unlawful purpose, his assignment may be cancelled by the tribal council after due notice and opportunity to be heard. Such land may then be available for reassignment.

Upon the death of any Indian holding a "home assignment" his heirs or other individuals designated by him by will or written request shall have preference in the reassignment of the land, provided such persons are eligible to receive a "home assignment."

SEC. 7. Any member of the Rosebud Tribe who owns an allotment of land or any share in heirship land or any deeded land, may, with the approval of the Secretary of the Interior, voluntarily transfer his interest in such land, including or excluding mineral rights therein, to the tribe and receive therefor an assignment in the same land or other land of equal value or he may receive a proportionate share in a unit of grazing land.

Assignments made under this section shall be known as "exchange assignments."

SEC. 8. A member receiving an "exchange assignment" shall receive the right to lease such assigned lands or interests under the same terms as governing the leasing of allotments.

SEC. 9. Upon the death of a holder of an "exchange assignment", such lands shall be reassigned by the tribal council to his heirs or devisees, subject to the following conditions:

(a) Such lands may not be reassigned to any heir or devisee who is not a member of the Rosebud Tribe,

except that a life assignment may be made to the surviving spouse or child of the holder of such assignment.

(b) Such lands may not be reassigned to any heir or devisee who already holds more than 640 acres of grazing land or other lands of equal value.

(c) Such lands may not be subdivided into units too small for practical use. No area of grazing land shall be subdivided into units smaller than one hundred sixty (160) acres. No area of agricultural land shall be subdivided into smaller units than two and one-half (2½) acres. When interests in assignments shall involve smaller areas than the amounts herein set out, the tribal council may issue to such heir or devisee a proportionate share in other grazing units or other interests in land of equal value.

(d) If there are no eligible heirs or devisees of the decedent, the land shall be eligible for reassignment the same as other tribal lands.

SEC. 10. Improvements of any character made upon assigned land may be willed to and inherited by members of the Rosebud Tribe. When improvements are not possible of fair division, the tribal council shall dispose of them under such regulations as it may provide. No permanent improvements may be removed from any tribal or assigned land without the consent of the tribal council.

SEC. 11. No member of the Rosebud Tribe may use or occupy tribal lands except under assignment or lease.

SEC. 12. Unassigned land shall be managed by the tribal council for the benefit of the members of the entire tribe.

SEC. 13. Tribal funds may be used, with the consent of the Secretary of the Interior, to acquire land for the Rosebud Tribe.

SEC. 14. Applications for assignments of land shall be made in writing. Such applications shall be submitted to the council at regular or special sessions. The application will be placed in the hands of a proper committee who will call the matter up for action at the next regular meeting of the council. Any member of the tribe may object, in writing, to a proposed assignment. In the event of objection, the chairman of the council shall set a date for a hearing, advising both the applicant and the objector. The action of the council shall be final.

The secretary of the council shall furnish the superintendent or other officer in charge of the agency a complete record of all action taken by the council on applications for assignment of land, and a complete record of assignments shall be kept in the agency office and shall be open for inspection by members of the tribe.

The council shall draw up one or more forms for standard and exchange assignments, which shall be subject to the approval of the Secretary of the Interior.

ARTICLE IX—AMENDMENTS

This constitution and by-laws may be amended by a majority vote of the qualified voters of the Rosebud Sioux Tribe voting at an election called for that purpose by the Secretary of the Interior provided that at least thirty (30) per cent of those entitled to vote shall vote in such election; but no amendment shall become effective until it shall have been approved by the Secretary of the Interior. It shall be the duty of the Secretary of the Interior to call an election on any proposed amendment, upon receipt of a written resolution signed by at least three-fourths (¾) of the membership of the council.

BYLAWS OF THE ROSEBUD SIOUX TRIBE OF SOUTH DAKOTA

ARTICLE I—DUTIES OF OFFICERS

SECTION 1. It shall be the duty of the president to preside over all meetings of the Rosebud Sioux Tribal Council and carry out all orders of the council. He shall vote only in case of a tie.

SEC. 2. The vice-president shall assist the president when called upon to do so, and, in the absence of the president, he shall preside. When so presiding, he shall have all the rights, privileges, duties, as well as the responsibilities, of the president.

SEC. 3. The council secretary shall keep a full report of all proceedings of each regular and special meeting of the tribal council and shall perform such other duties of like nature as the council shall from time to time by resolution provide, and shall transmit copies of the minutes of each meeting to the council, to the superintendent of the reservation, and to the Commissioner of Indian Affairs.

SEC. 4. The council treasurer shall be the custodian of all moneys which come under the jurisdiction or in control of the Rosebud Sioux Tribal Council. He shall pay out money in accordance with the orders and resolutions of the council. He shall keep account of all receipts and disbursements and shall report the same to the council at each regular meeting. He shall be bonded in such an amount as the council by resolution shall provide, such bond to be satisfactory to the Commissioner of Indian Affairs. The books of the council treasurer shall be subject to audit or inspection at the discretion of the council or of the Commissioner.

Article II—Duties of Councilmen

It shall be the duty of each member of the tribal council to make reports to the community from which he was elected concerning the proceedings of the tribal council.

Article III—Oath of Office

Each member of the tribal council and each officer or subordinate officer, elected or appointed hereunder shall take an oath of office prior to assuming the duties thereof; by which oath, he shall pledge himself to support and defend the Constitution of the United States and this constitution and by-laws. (Oath): I, ----------, do hereby solemnly swear that I will support and defend the Constitution of the United States against all enemies, will carry out, faithfully, and impartially, the duties of my office to the best of my ability; and will cooperate, promote and protect the best interests of my tribe, the Rosebud Sioux, in accordance with this constitution and by-laws.

Article IV—Salaries

Section 1. The tribal council may prescribe such salaries of tribal officers, employees, or member of the council as it deems advisable from such funds as may be available.

Sec. 2. No compensation shall be paid to any councilman, president, vice-president, secretary, treasurer, tribal council, or any officer out of the tribal funds under the control of the Federal Government, except upon a resolution stating the amount of compensation and the nature of services rendered, and said resolution shall be of no effect until approved by the Secretary of the Interior.

Article V—Meetings of Council

Section 1. Regular meetings of the council shall be four (4) in each year, and shall be held in January, April, July, and October, on such days in said months and at such places at the council by resolution shall provide. Two-thirds (⅔) of the duly elected members must be present to constitute a quorum. Special meetings may be called by the president, the superintendent of the reservation, or by a majority of the councilmen in writing, and when so called, two-thirds (⅔) of said councilmen must be present to constitute a quorum and the council shall have power to transact business as in regular meetings.

Sec. 2. A designated room or place shall be set aside for the tribal council, where all records and tribal council property shall be kept.

Article VI—Sioux Councils

The tribal council shall have the power to select delegates to sit in National Sioux Councils.

Article VII—Adoption of Constitution and By Laws

This constitution and by laws, when ratified by a majority of the qualified voters of the Rosebud Sioux Tribe voting at a special election called for the purpose by the Secretary of the Interior, provided that at least 30 percent of those entitled to vote shall vote in such election, shall be submitted to the Secretary of the Interior, and, if approved, shall be effective from date of approval.

CERTIFICATION OF ADOPTION

Pursuant to an order, approved November 1, 1935, by the Secretary of the Interior, the attached consti-

tution and by-laws were submitted for ratification to the members of the Rosebud Sioux Tribe of the Rosebud Reservation and were on November 23, 1935, duly approved by a vote of 992 for and 643 against, in an election in which over 30 percent of those entitled to vote cast their ballots, in accordance with section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), as amended by the Act of June 15, 1935 (Public, No. 147, 74th Cong.).

GEORGE KILLS IN SIGHT,
Chairman of Election Board.
GEORGE WHIRLWIND SOLDIER,
Vice Chairman of Rosebud Sioux Tribal Council
WALLACE A. MURRAY,
Secretary of Rosebud Sioux Tribal Council.
W. O. ROBERTS,
Superintendent.

I, Harold L. Ickes, the Secretary of the Interior of the United States of America, by virtue of the authority granted me by the act of June 18, 1934 (48 Stat. 984), as amended, do hereby approve the attached constitution and by-laws of the Rosebud Sioux Tribe.

All rules and regulations heretofore promulgated by the Interior Department or by the Office of Indian Affairs, so far as they may be incompatible with any of the provisions of the said constitution and by-laws are hereby declared inapplicable to the Rosebud Sioux Tribe.

All officers and employees of the Interior Department are ordered to abide by the provisions of the said constitution and by-laws.

Approval recommended December 16, 1935.

JOHN COLLIER,
Commissioner of Indian Affairs.
HAROLD L. ICKES,
Secretary of the Interior.
[SEAL]

WASHINGTON, D.C., *December 20, 1935.*

APPENDIX C

The documents in this Appendix are examples of the continuing exercise of jurisdiction by the Rosebud Tribe throughout the Reservation. See note 22, *supra.*

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS, FIELD SERVICE,
ROSEBUD INDIAN AGENCY,
Rosebud, South Dakota, April 21, 1941.

MR. WILLARD W. BEATTY,
Director of Education, Office of Indian Affairs,
Washington, D.C.

DEAR MR. BEATTY: I am enclosing herewith copy of resolution relative to health education passed by the Rosebud tribal council at its last meeting. My thought is that you would be interested in this, especially since the movement has sprung from the Indians. Some weeks ago the health committee of the tribal council called at my office expressing the thought that the Indians themselves could do a great deal more than has been done if they would become more active in cooperating with the health program. Out of this discussion it was concluded to call a meeting of the doctors and nurses to discuss this thought in conference with the tribal health committee. At this meeting it was decided to invite the health committees from each one of the communities to a general meeting at the boarding school to feel out the sentiment of the people as to what should be done and what could be done.

From this general meeting at the boarding school there was evolved practically what is contained in this resolution. The health committee submitted the resolution to the council at a special meeting February 17.

The council members then took copies of this resolution with the understanding they would discuss the matter with the people of their communities. At the regular council meeting held April 1, the resolution was again brought to the floor and was adopted by a vote of 23 for and none against—5 not voting. It will be noted this resolution is based entirely upon the thought of educating the communities in stirring them to action; that in each paragraph some one is urged or requested or given an opportunity to do so and so, and that the thought of penalties is entirely absent.

Yours very truly,

C. R. WHITLOCK,
Superintendent.

Enclosure.

RESOLUTION (EXCERPTS)

Whereas, Doctor Frazier has retired from the Indian Service, and

Whereas, this leaves the Milk's Camp Community[*] without medical aid, and

Whereas, it has been requested by the Milk's Camp Community that the Rosebud Sioux Tribal Council recommend that they be given a Field Nurse, therefore

Be it Resolved, by the Rosebud Sioux Tribal Council in council assembled this 9th day of April, 1941, that the above request of the Milk's Camp Community be given a favorable consideration.

Be it Further Resolved, that the council recommend that a Field Nurse be stationed in the vacancy of Doctor Frazier at an earliest date possible.

Sgd. CLEMENT VALANDRA,
Sgd. EMMET EAGLE BEAR,
Sgd. ANTOINE ROUBIDEAUX,
Resolution Committee.

*Milk's Camp is in Gregory County.

MOTION

Upon motion duly made by Jack Williams and seconded by Joe Henry, members of the council, the above foregoing resolution was duly adopted by the Rosebud Sioux Tribal Council by a vote of 23 for, none against, and 5 not voting.

This certifies that the above is a true and correct copy of resolution duly adopted by the Rosebud Sioux Tribal Council in regular session held at the Rosebud Indian Agency, Rosebud, South Dakota, April 9, 1941.

THOMAS F. WHITING,
President, Rosebud Sioux Tribal Council.

Attest:

THOMAS A. FLOOD,
Secretary, Rosebud Sioux Tribal Council.

Date: 4/15/41

Approved:

C. R. WHITLOCK,
Supt., Rosebud Indian Agency, Rosebud, South Dakota.

Date:

TRIBAL COUNCIL, OCTOBER 27, 1958

MINUTES

"Approval appointment of Community Police" Motion made by Mr. Wellman Collins to authorize appointment of Mr. Henry Shield and Mr. Jasper Peneaux for Community Tribal Police. Motion seconded by Mr. Wilbur Blacksmith. Motion carried, 19 for and none opposed.

"*Claim of $20.00*".—Mr. Leo Menard submitted a claim for $20.00 for the use of his trailer for moving and transporting materials from Rosebud to the fair grounds during the Rosebud fair. Motion made by Mr. Leo Running Horse to authorize payment of the claim. Motion seconded by Mr. Joe Stands. Motion carried, 19 for and none opposed.

"*Request of Ideal Community*".[*]—A request was submitted by the people of Ideal Community for lumber to fix up benches for their meeting hall, also, if possible to have the tribal truck delivery drinking water to the cistern which was setup for this community. The Chairman advised that he will write a letter to the community about this request.

"*$500,000.00 Loan*".—The Chairman informed the Council Body that the necessary documents have been prepared in connection with the $500,000.00 loan. In connection, a resolution will be needed to complete the loan transaction. Motion made by Mr. Antoine Roubideaux to authorize the Officers of the Tribal Council to draft such resolution and put into effect and the President and Secretary certify the resolution. The motion seconded by Mr. Wilbur Blacksmith. Motion carried, 15 for, none opposed, 5 not voting.

"*Sub-Charter*".—The Chairman requested that someone or committee be authorized to draft a Bylaws for Sub-Charter for management of the tribal cattle herd. Motion was made by Mr. Antoine Roubideaux to authorize the Chairman to appoint any number of committee from members of the Council or Officers for the purpose of drafting a Bylaws for Sub-Charter. Motion seconded by Mr. Wilbur Blacksmith. Motion carried, 19 for and none opposed.

"*Request for Lumber*".—Mr. Leo Menard, member of the Housing Committee of the Tribal Council, requested that some lumber be released from the horse and dairy barns at the Boarding school for distribution among the most needy families of the reservation. The Chairman advised that he will hold a meeting with the committee for this purpose.

"*Adjournment*".—Motion made by Mr. Gus Knox to adjourn meeting. The motion seconded by Mr. Antoine Roubideaux. Motion carried unanimously.

Done on this 27th day of October 1958, at Rosebud, South Dakota by the Tribal Council.

Antoine Roubideaux
ANTOINE ROUBIDEAUX,
Secretary, Rosebud Sioux Tribal Council

*The Ideal Community is in Tripp County.

MINUTES, ROSEBUD SIOUX TRIBAL COUNCIL, ROSEBUD, SOUTH DAKOTA, JULY 9, 1963

The Rosebud Sioux Tribal Council met in regular session in the Tribal Administration Building, Rosebud, South Dakota. The meeting was called to order at 1:20 p.m., on Tuesday, July 9, 1963, by Mr. Cato W. Valandra, President. Mr. Sam Bear opened the meeting with prayer.

Roll call for quorum was taken by the Secretary and all twenty-two (22) members of the Council were present.

Cato W. Valandra
Adam Bordeaux
Antoine Roubideaux
Opie LaPointe
Paul Cloudman
Henry Horse Looking
Charles Kills In Water
Robert Kills Plenty
Stephen Spotted Tail
Isaac Iron Shell
Leo Running Horse
Sam Bear
Asa Long Warrior
John Burnette
George Brave
Robert Moran
Homer Whirlwind Soldier
Gus Knox
Lloyd Winter Chaser
William Long Crow
Sam White Horse
Joe Stars

Also Present: Thomas Bone Shirt, Sergeant-At-Arms
Robert Burnette
Dr. E. E. Bayse
Dr. Charles Allen
Dr. Bertrum Rogers

Dr. E. E. Bayse, Medical Officer in Charge, Rosebud Hospital, came before the Council with Dr. Charles Allen and Dr. Bertrum Rogers and introduced them to the Council. Dr. Allen and Dr. Rogers are new doctors at the Rosebud Hospital. Dr. Bayse informed the Council of extra hours for clinic on Tuesday.

Mr. Robert Burnette, Executive Director, NCAI, suggested that the Council call upon the South Dakota delegation in Congress for the need of funds to provide public works on the reservation. He also suggested to continue the fight against state jurisdiction.

The following Resolution No. 6334 relating to conveyance of 18 acres of Tribal land to the Mellette County School District and the resolution was adopted by a vote of 16 for, none opposed, 5 not voting, on a motion made by Sam Bear and seconded by Sam White Horse.

WHEREAS, the Act of June 4, 1953, chap. 98, (67 Stat. 41) as amended, 25 U.S.C. 293 a, requires the consent of the Tribe to the conveyance of the interest of the United States in any land used for Indian school purposes subject to the conditions prescribed in the statute; and

WHEREAS, the Black Pipe School District No. 8 desires the transfer of 18.004 acres more or less for school purposes which 18.004 acres is a part of a reserve of 319.83 acres of tribal land set aside for the Black Pipe Issue Station and the Black Pipe Day School which reserve the Tribe has long sought to be restored to tribal status,

NOW, THEREFORE BE IT RESOLVED, that the Rosebud Sioux Tribe does hereby consent, subject to the conditions hereinafter specified, to the conveyance by the Secretary of the Interior, or his authorized representative, to the Black Pipe School District No. 8 of the following described property:

Commencing on the NE corner of section 3. T. 40 N., R. 33 W., 6th Principal Meridian, South Dakota; thence in a southerly direction on the east boundary line of said section 3, a distance of 1,765.00 ft., to an iron pin on centerline of road which marks the NE corner of the Norris School Ground Plot, thence continuing in a southerly direction on the east boundary line of said section 3, a distance of 190.8 ft., to an iron pin on centerline of road thence in a westerly direction paralleling the north boundary line of said section 3, a distance of 370.0 ft., to an iron pin, thence in a southerly direction paralleling the east boundary line of said section 3, a distance of 220.0 ft., to an iron pin, thence in an easterly direction paralleling the north boundary line of said section 3, a distance of 370.0 ft., to an iron pin on centerline of road, thence in a southerly direction on the east boundary line of said section 3, a distance of 204.2 ft., to a "½" inch bolt with wire attached on centerline of road, thence 1,407.6 ft., in a westerly direction paralleling the north boundary line of said section 3, to a 1¼ inch iron pipe sunk in the ground; thence 615.0 ft., in a northerly direction paralleling the east boundary line of said section 3 to a ¾ inch galvanized pipe sunk in ground; thence 1,407.6 ft., in an easterly direction paralleling the north boundary line of said section 3 to an iron pipe on centerline of road which is the beginning point of the Norris School Ground Plot containing 18.004 acres, more or less, including all improvements and equipment thereon.

This consent is on condition as follows:

(1) that this consent and the conditions of this consent shall be incorporated in and made a part of the instrument of conveyance.

(2) That there is expressly reserved to the Tribe and excepted from the conveyance, all of the oil, gas, and other minerals and mineral rights of whatever nature or description in the lands, with the exclusive right to prospect, exploit, develop and operate without limitation or payment of damages.

(3) That the conveyance is on the express condition that, and so long as, (a) the premises are used for the purpose of maintaining a school and attendant school facilities and for no other purposes and (b) the facilities of the school are available to Indians on the same terms as they are available to non-Indians, except that no tuition or the equivalent of tuition shall ever be required from members of the Rosebud Sioux Tribe of school age, their parents or guardians.

(4) That before the conveyance to School District No. 8 is delivered to the school district, it shall be furnished to the Tribe for examination to insure that the conditions of this consent will be contained in the conveyance.

BE IT FURTHER RESOLVED, that this consent is given on assurance of the Bureau of Indian Affairs that prompt steps will be taken to transfer to the Tribe all of the 319.83 acres reserve less the 16.004 acres to be conveyed to School District No. 8.

BE IT FURTHER RESOLVED, that the President and Secretary are authorized to execute all necessary papers to carry out the purposes to this resolution.

Robert Moran, Councilman from Bad Nation Community, introduced the following resolution relating

to minimum rate per head on tribal land. The resolution was rejected by a vote of 14 against, 4 for, and 4 not voting. Mr. Moran moved for adoption of the resolution which was seconded by Opie LaPointe.

WHEREAS, the Community of Bad Nation feels that allotted land is leased at a high rate so in order to equalize the leasing rates, they feel that tribal land should be leased to Indian operators and loan clients at a rate of $10.00 per head.

WHEREAS, they feel that this would help the Indian operators and loan clients to stay in business.

WHEREAS, tribal land program was set up to benefit the Indian people, so therefore the Community of Bad Nation goes on record with this resolution to help the Indian people in regulating their leasing expenses.

Chairman — Secretary

(S) AARON H. MORAN — (S) MONICA DILLON

.05—Other Expenses of Law and Order:

Office supplies & equipment	$ 1,000.00
Postage	50.00
Tax	600.00
Police Uniforms	500.00
Total	$12,700.00

Mr. Lloyd Winter Chaser, Councilman from Ideal Community,[1] asked if the Tribe could station a tribal or Federal police officer in Ideal Community. The reason for the request is that the Tripp County Sheriff refused cooperation due to lack of state jurisdiction. The Tripp County Sheriff used to help enforce law now he refuses to help the community.

Both the Chairman and Superintendent advised that County Sheriffs on the reservation are commissioned by the Bureau of Indian Affairs as Federal Police

[1] Ideal Community is located in Tripp County.

Officers. They have jurisdiction to enforce laws on Indian land.

Mr. Gus Knox also stated that the Todd County Deputy Sheriff refused to patrol a road during a funeral.

The Chairman stated that he will inform the proper state officials concerning the attitude of the County Sheriffs.

The Superintendent stated that the Commission issued to the Sheriffs may have expired July 1, 1963. He said he would check to see if the Commissions are still in effect.

Mr. Long Crow stated that the Tripp County Sheriff will help us if we need him. (Mr. Long Crow is Councilman from Bull Creek Community.)

Mr. Joe Stars, Representative from Milk's Camp,[2] stated that the Gregory County Sheriff has been very cooperative.

Mr. George Brave, Representative from Horse Creek Community, suggested that the law and order budget should be increased for more tribal police.

Treasurer: The Law and Order operation is on a self-paying proposition. Their income will not allow an increase in the budget.

A budget for the Tribal Council operations for fiscal year 1964 was presented by the Treasurer and was approved by a vote of 20 for, none opposed, and 2 not voting on a motion made by Sam White Horse and seconded by Leo Running Horse.

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[2] Milk's Camp is located in Gregory County.

APPENDIX D

JANUARY 12, 1938.

ORDER OF RESTORATION, ROSEBUD RESERVATION, SOUTH DAKOTA

WHEREAS, under authority contained in the acts of Congress approved April 23, 1904 (33 Stat. 254), March 2, 1907 (34 Stat. 1230), and May 30, 1910 (36 Stat. 448), providing for the disposal by the United States of large areas of land within the boundaries of the Rosebud Indian Reservation, State of South Dakota, said areas were opened to settlement and entry under the general provisions of the homestead and townsite laws of the United States and of the said acts of Congress by Presidential proclamations of May 13, 1904 (33 Stat. 2354), August 24, 1908 (35 Stat. 2203), and June 29, 1911 (37 Stat. 1691), respectively, and

WHEREAS, pursuant to authority contained in the act of March 2, 1907, supra, certain tracts of land within the opened portion of the reservation were set aside and reserved for the townsites of Wamblee, Witten, and Wewela, and

WHEREAS, there are now remaining undisposed of on the said opened portion of the Rosebud Reservation a number of tracts of surplus land, together with a large number of vacant lots within the above mentioned townsites which, while of little value for the original purpose of settlement and entry, upon thorough investigation have been found to be valuable to the Indians of the said reservation, and

WHEREAS, by relinquishment and cancellation of homestead entries a small additional area of land may be included within the class of undisposed-of surplus land, and

WHEREAS, the Tribal Council, the Superintendent of the Rosebud Indian Reservation, and the Commissioner of Indian Affairs have recommended restoration to tribal ownership of all such undisposed-of lands in the said reservation.

NOW, THEREFORE, by virtue of the authority vested in the Secretary of the Interior by Sections 3 and 7 of the act of June 18, 1934 (48 Stat. 984), I hereby find that restoration to tribal ownership of all lands which are now or may hereafter be, classified as undisposed-of, surplus, opened lands of the Rosebud Indian Reservation, together with all unsold lots in the townsites of Wamblee, Witten, and Wewela, will be in the public interest, and the said lands are hereby restored to tribal ownership for the use and benefit of the Rosebud Sioux Tribe of Indians of the Rosebud Indian Reservation in the State of South Dakota, and are added to and made a part of the existing reservation, subject to any valid existing rights.

(Signed) HAROLD L. ICKES,
Secretary of the Interior.

JANUARY 12, 1938.

APPENDIX E

DIVISION OF FORESTRY AND GRAZING,
ROSEBUD INDIAN AGENCY,
Rosebud, South Dakota, January 9, 1939.

COMMISSIONER OF INDIAN AFFAIRS,
Washington, D.C.
(Attention: L. D. Arnold.)

DEAR SIR: We are forwarding herewith map of the Rosebud Indian Reservation showing different types of roads for your consideration for printing. This is in compliance with your letter of September 27, 1939.

Some changes in location of high-ways and roads are shown. All pavement on US high-way #18 shown is laid or programmed to be laid during 1940–41. Pavement west of Jordan has not been laid but is programmed by the State High-way Department. This is also true of pavement between Colome and Herrick. Owing to the time these will be used after being printed we deem it advisable that paved road be shown as marked. The proposed location of US #183 has been shown as a dotted green line in Tripp County south of High-way #18.

We have marked all classes of roads and trails. For printing you will probably desire to show only such roads as are graded and maintained and such trails as connect with same to go through to a nearby improved road. We would like to have the fire trails shown if convenient. For use in the field it is best to have as many roads shown as is feasible.

Source material was secured as follows:

1. USIS Roads: from Road Department, Rosebud, S.D.

2. State High-way: from State High-way Department, Pierre, S.D.

3. Todd County: County roads from County Commissioners; trails from TCBIA Range Survey Maps, fire trails from CCC–ID.

4. Mellette County: Maintained roads from County Engineer, trails from same source. Trails had been taken from aerial maps.

5. Tripp County: from County Engineer, Winner, S.D.

6. Gregory County: from State High-way Department, Pierre, S.D.

7. Lyman County: from County Engineer, Kennebec, S.D.

In northeastern Mellette County the locations of two towns are changed. Brave is no longer a post office. The store has been moved to the location shown. The name of Runningville has been changed to Bad Nation and its location is one-half mile west of the point shown on the print. The new location is shown. In southeastern Mellette County there is a new town on the railroad called Mosher.

In southwestern Todd County, Caddy post office no longer exists. Littleburg is shown. There is a store, grade school and high school here.

In Gregory County, Mullen no longer exists, but two new localities, Lucas and Carlock, are shown.

Names of Day Schools where there are no structures or school is no longer held have been marked off. Locations of new schools are shown. New schools are located at Soldier Creek, Ring Thunder, Grass Mountain, Spring Creek, Okreek, Bad Nation, Black Pipe and Horse Creek. The name of Cutmeat Day School has been changed to He Dog. The Black Pipe Issue Station at Norris was shown incorrectly. It is the

NW/4 of sec. 2 and NE/4 of sec. 3, Twp. 40, Range 33. The Grass Mountain colony and the proposed new Boarding School Site are shown.

Four fire look-out tower sites are shown, one on Cedar Butte in Mellette County, and three in Todd County, one near Haystack Butte, and two at the North and South of the West Timber Reserve.

Government telephone lines have been constructed to the look-out towers, to connect with the Pine Ridge system, to Arnold's Ranch and to the following day schools: Spring Creek, Grass Mountain, He Dog, Soldier Creek, Ring Thunder, Black Pipe, and the Rosebud Boarding School. A government line also runs to St. Francis connecting with the nurses quarters and the Mission School. Another government line runs to Crookston, Nebraska, connecting with the automatic exchange there.

The A.T. & T.-Bell System lines are shown in Mellette, Todd and Tripp Counties. Farm lines are not shown. Their lines end at Mission where we make a connection to their exchange. There is no line running from Kary to Parmelee as shown on the present print.

Roads shown on the print which are not colored are no longer there.

Respectfully,

CHARLES R. PETELER,
Assistant Range Examiner.

Approved:
C. R. WHITLOCK,
Superintendent.

APPENDIX F

U.S. DEPARTMENT OF THE INTERIOR,
FISH AND WILDLIFE SERVICE,
September 22, 1942.

Memorandum for the Commissioner of Indian Affairs.

Enclosed are four copies of a wildlife survey and management report on the Rosebud Indian Reservation, submitted by Assistant Biologist Carl Eklund in August 1942.

It is a pleasure to note the progress recently made on this Reservation by the Tribe, in enacting an unusually good wildlife ordinance, and by the Agency personnel, in improving the management of fur resources. I hope that further benefits can be realized as a result of Mr. Eklund's findings, and that the Reservation will avail itself of material aid from our LaCreek Refuge, as suggested in the report. Transplanting of muskrats from LaCreek to Rosebud should aid both areas, providing that adequate preparation is made at the latter by planting of aquatics as recommended. We will be glad to have Mr. Eklund work directly with the Reservation Superintendent on such matters.

CHAS. E. JACKSON,
Acting Director.

Enclosure 924.

WILDLIFE SURVEY AND MANAGEMENT REPORT ON THE ROSEBUD INDIAN RESERVATION

Wildlife investigations on the Rosebud reservation in south-central South Dakota were carried on from

April 26–May 14, and May 17–19, 1942. Purpose of the work was to survey the wildlife resources, suggest possible management practices, and help the Tribal Council set up game ordinances.

Field work was carried on with Range Examiner Vance A. Tribbett, and Assistant Indian Forester Raymond Reynolds. Conferences were held with Superintendent Claude R. Whitlock, the Rosebud Sioux Tribal Council, and various Indian Service officials.

Heaviest rains in South Dakota history, and a severe snowstorm, made roads impassable much of the time. This prevented considerable detailed survey work which it was hoped could have been carried on in connection with beaver studies.

The Tribal Council unanimously adopted the proposed game ordinances on May 19. Potentially, this is the finest set of ordinances yet adopted by any council in this region, and if enforced could make Rosebud one of the best game areas in the Great Plains region.

Previous reports on this reservation have been made by Mr. Clifford C. Presnall as of November 13, 1941 (Wildlife Report on Rosebud Indian Reservation), and by Mr. Charles L. Fuqua, Spearfish Hatchery Foreman, on October 24, 1934 (Report of Stream Inspection Trip to the Rosebud Indian Reservation).

DESCRIPTION

The entire reservation is included in Tripp, Gregory, Mellette, and Todd Counties, and covers a gross area of 3,555,833 acres. Alienated white lands total 2,468,888 acres of this area. Most of the field work was conducted on the so called "Diminished Reservation" in Todd County. This area, including alienated land, totals approximately 894,080 acres. Much of this is checkerboarded although there are some large solid

220-194—76——7

blocks of Indian land. The largest percentage of the diminished reservation is Indian owned. Approximately 7,000 Indians are enrolled in the tribe.

Soil is an important factor in the ecology of game animals, and in the Great Plains region it is probably a basic limiting factor in their distribution. Any management plan should give some thought to the soil types, with their resultant characteristic vegetation. The following four general types are found within the diminished reservation in Todd County:

I. Rosebud sandy soils group. This comprises about 70% of the county. Characterized by level to rolling land, is very productive as grassland, and has good average productivity under cultivation. Vegetation is the mixed prairie type short and tall grasses such as Western wheatgrass (*Agropyron smithii*), porcupine grass (*Stipa comata*), sandgrass (*Calamonilfa longifolia*), little bluestem (*Andropogon scoparius*), blue grama (*Bouteloua gracilis*), buffalo grass (*Buchloe dactyloides*), and a sedge, nigger-wool (*carex filifolia*). This soil type would carry the heaviest pheasant population because here would be found the best farm crops.

II. Epping-Laurel series. Mostly silty and clay soils. Comprises about 15% of the total area. Characterized by short grasses and rolling to steeply rolling uplands. This is not considered good farm land. Predominant vegetation is blue grama, buffalo grass, wheatgrass, and nigger-wool.

III. Pierre-Boyd-Orman series. This is mostly clay soil characterized by fast surface runoff, slow underdrainage, undulating to hilly uplands, and short grasses. It comprises approximately 5% of the reservation and is not considered good farm land.

APPENDIX G

FEDERAL POWER COMMISSION,
Washington.

BP–P–South Dakota.
TOWN OF WHITE RIVER,
Mellette County, South Dakota.
(Attention Mr. L. L. King, President, Town Board of Trustees.)

GENTLEMEN: Reference is made to your letter of December 13, 1940, relative to the construction of an electric power line across Indian lands. It is noted that the energy to be transmitted would be used to operate a pumping plant in connection with the proposed installation of a water works system to serve the Town of White River.

If tribal Indian lands are to be crossed, you are advised that, subject to the prior approval of the proper reservation authorities, immediate construction and use of the line, at your risk, prior to the issuance of a license therefor, will not prejudice consideration by the Commission of an application for license provided that such application shall be filed within ninety days from the date of this letter.

There is inclosed a copy of the Commission's Rules of Practice and Regulations to assist you in the preparation of your application for license in case lands of the United States or tribal Indian lands are to be crossed. Your attention is particularly called to Sections 1.80 to 1.85, page 8; to Sections 4.30 to 4.33, pages 18 and 19; to Sections 4.70 and 4.71, pages 30 and 31; and to Section 200.5, page 78. Your application should follow the form shown on page 78, should

be verified as shown on page 77, and should be accompanied by the exhibits listed on pages 30 and 31, certified as shown in Section 200.4, page 78. Your project maps should be prepared in accordance with specifications given in Section 4.42, pages 26 and 27.

Very truly yours,

LEON M. FUQUAY, *Secretary.*

Enclosure 102056.

FEDERAL POWER COMMISSION,
Washington.

EP–1827–South Dakota.

The Honorable SECRETARY OF THE INTERIOR.
Washington, D.C.

DEAR SIR: The Town of White River, South Dakota, has filed with the Commission an application for license for transmission line project No. 1827 in Mellette County, South Dakota, affecting lands of the United States within the Rosebud Indian Reservation.

The project consists of a 2,300-volt electric power line in sec. 34, T. 42 N., R. 29 W., Sixth principal meridian, which will transmit energy to operate a pumping plant in connection with a proposed water works system. The line occupies a right-of-way of unspecified width across Indian lands with provision for an alternate location as described in the application, three copies of which are inclosed.

You are invited to report whether the license, if issued, would interfere or be inconsistent with the purpose for which any reservation under your supervision was created or acquired, and to state the conditions which are deemed necessary for the adequate protection and utilization of any such reservation affected. It is requested that your report recommend any conditions necessary for the protection of the interests of the Indians, including charges for the use of tribal lands.

Very truly yours,

LEON M. FUQUAY, *Secretary.*

Appendix H

In the District Court of the United States for the District of South Dakota, Western Division

Civil No. 63 V.D.

UNITED STATES OF AMERICA, PLAINTIFF

v.

610.10 ACRES OF LAND, MORE OR LESS, IN MELLETTE COUNTY, SOUTH DAKOTA: F. A. ANDERSON, NETTIE E. ANDERSON, S. J. LARSON, ELLEN G. LARSON, MELLETTE COUNTY, SOUTH DAKOTA, A PUBLIC CORPORATION, MELVIN A. ANDERSON, C. A. WOOD, GEORGE C. JOHNSON, ALSO KNOWN AS GEO. C. JOHNSON, FIRST NATIONAL BANK OF THE BLACK HILLS, A CORPORATION, DEFENDANTS

Findings of fact, conclusions of law, and order for judgment

The above entitled action came on regularly to be heard before this Court at Sioux Falls, South Dakota, on the 12th day of December, 1941, at which time the United States of America, plaintiff herein, appeared by George Philip, United States Attorney for the District of South Dakota, and Matthew A. Brown, Special Attorney for the Department of Justice. The defendants Melvin A. Anderson and C. A. Wood filed their appearances in writing disclaiming any interest in the land to be acquired herein or in the compensation to be paid therefor. The defendant Mellette

County, South Dakota, a public corporation, filed its appearance and disclaimer on condition that it be paid the sum of ONE THOUSAND EIGHT HUNDRED FIFTEEN DOLLARS AND SEVENTY-NINE CENTS ($1,815.79) representing taxes which are a lien on the land to be acquired herein. The defendants S. J. Larson and Ellen G. Larson filed their appearance in writing disclaiming any interest in the land to be acquired herein or in the compensation to be paid therefor on condition that they be relieved of the terms of the option hereinafter described. The defendants F. A. Anderson, Nettie E. Anderson, George C. Johnson also known as Geo. C. Johnson, and First National Bank of the Black Hills, a corporation, submitted a petition for payment and all parties joined in a stipulation for the immediate submission of the cause and for judgment therein, which petition and stipulation and the appearances above recited have been presented to this Court and are ordered to be filed in this proceeding.

The Court thereupon proceeded to a hearing of the case and having duly considered the matter and being fully advised in the premises, upon motion of all parties to the action, making the following

FINDINGS OF FACT

1. This is an action in condemnation whereby the plaintiff seeks to acquire title to the following described land situated in Mellette County, South Dakota, to-wit:

> Lots 1, 2, 3, 4, 5, the South Half of the Southeast Quarter, the Northeast Quarter of the Southeast Quarter, of Section 8, and the North

Half of Section 17, Township 43 North, Range 28 West of the 6th Principal Meridian, containing 610.10 acres of land, more or less, in Mellette County, South Dakota, designated as Tract No. 189 of the Two Kettle Project on the Rosebud Indian Reservation,

and that it has the authority so to do. On June 10, 1941, it filed herein its declaration of taking of said land, and on October 23, 1941, deposited in the Registry of the Court the sum of SIX THOUSAND DOLLARS ($6,000.00) as just compensation therefor.

2. At the time of the commencement of this action there was a dispute as to the ownership of said land between the defendants E. J. Larson and F. A. Anderson, and on April 22, 1941, the defendants E. J. Larson and Ellen O. Larson executed and delivered to the plaintiff their option offering to convey said land to the plaintiff for the sum of SIX HUNDRED TWENTY DOLLARS ($620.00) net to them, which option does not expire by its terms until January 22, 1942. With the consent of the plaintiff and in consideration of its release of said defendants from the terms of said option said defendants have executed and delivered to the defendants First National Bank of the Black Hills and George C. Johnson a quit claim deed conveying all their interest in said land, and have filed herein their appearance disclaiming any interest in said land or in the compensation to be paid therefor.

3. At the time such compensation was deposited in the Registry of the Court the record owners of said land were the defendants George C. Johnson and First National Bank of the Black Hills and the only persons having any interest in or lien upon said land

or the compensation to be paid therefor were and are the defendants F. A. Anderson, Nettie E. Anderson, Mellette County, South Dakota, a public corporation, George C. Johnson, and First National Bank of the Black Hills.

4. Said sum of SIX THOUSAND DOLLARS ($6,000.00) is just compensation for said land, is now on deposit in the Registry of this Court, and should be disbursed as provided in the petition for payment herein.

5. All the allegations of the petition for condemnation, amended petition for condemnation, declaration of taking, judgment on the declaration of taking, and the appearances, disclaimers, petition for payment and stipulation for judgment, heretofore filed herein are true and are by reference made a part hereof.

From the foregoing Findings of Fact this Court makes the following

Conclusions of Law

1. The United States on the filing of the declaration of taking and the deposit of the sum therein provided became and now is the owner in fee simple in trust for the Rosebud Sioux Tribe of Indians of South Dakota and entitled to the immediate possession of the land described at paragraph 1 of the Findings of Fact.

2. The defendants S. J. Larson and Ellen G. Larson have no interest in said land or in the compensation to be paid therefor and judgment should be entered relieving them of the terms of their option described as paragraph 8 of the Findings of Fact.

3. The defendants Melvin A. Anderson and C. A. Wood have no interest in said land or in the compensation to be paid therefor.

4. The sum of SIX THOUSAND DOLLARS ($6,000.00) so deposited is and is accepted by the defendants as just compensation for said land; said sum is in the Registry of the Court and should be disbursed as follows:

To the County Treasurer of Mellette County, South Dakota, in payment of taxes on said land, the sum of	$1,815.79
To M. A. Brown, Chamberlain, South Dakota, on account of recording and abstract fees advanced by him, the sum of (the excess, if any, to be paid to the said F. A. Anderson)	$25.00
To F. A. Anderson and First National Bank of the Black Hills, the balance, to wit: the sum of (check therefor to be delivered to First National Bank of the Black Hills)	$4,159.21
Total	$6,000.00

the checks therefor to be transmitted to Matthew A. Brown, Special Attorney, Department of Justice, Chamberlain, South Dakota, one of the attorneys for the plaintiff, for delivery by him to the payees.

Let Judgement be entered accordingly.

Dated this 12th day of December, 1941.

By the Court:

A. LEE WYMAN,
Judge of said District Court.

Attest:

ROY B. MARKER,
Clerk of said District Court.

[SEAL OF COURT]

[Indorsed] * * Filed Dec. 12, 1941, Roy B. Marker, Clerk.

In the District Court of the United States for the District of South Dakota, Western Division

Civil No. 63 W. D.

UNITED STATES OF AMERICA, PLAINTIFF

v.

610.10 ACRES OF LAND, MORE OR LESS, IN MELLETTE COUNTY, SOUTH DAKOTA; F. A. ANDERSON, NETTIE E. ANDERSON, S. J. LARSON, ELLEN G. LARSON, MELLETTE COUNTY, SOUTH DAKOTA, A PUBLIC CORPORATION, MELVIN A. ANDERSON, O. A. WOOD, GEORGE C. JOHNSON, ALSO KNOWN AS GEO. C. JOHNSON, FIRST NATIONAL BANK OF THE BLACK HILLS, A CORPORATION, DEFENDANTS

Final Judgment

The above entitled action came on this day for hearing before the Court at Sioux Falls, South Dakota, upon the motion of the plaintiff for final judgment. The plaintiff appeared by its attorneys George Philip, United States Attorney for the District of South Dakota, and Matthew A. Brown, Special Attorney, Department of Justice. All defendants filed appearances and disclaimers which are recited in detail in the findings of fact, conclusions of law and order for judgment heretofore filed herein.

Upon all papers and files herein, the Court FINDS AND ADJUDGES that this is an action in condemnation whereby the plaintiff seeks to take for public use the land hereinafter described, that it has the right so to do under the authority stated in the petition for

condemnation and amended petition for condemnation, that on June 18, 1941, it caused to be filed herein its declaration of taking of said land, and on October 23, 1941, to be deposited in the Registry of the Court as just compensation therefor the sum of SIX THOUSAND DOLLARS ($6,000.00). Said land is described as follows:

> Lots 1, 2, 3, 4, 5, the South Half of the Southeast Quarter, the Northeast Quarter of the Southeast Quarter, of Section 8, and the North Half of Section 17, Township 43 North, Range 28 West of the 6th Principal Meridian, containing 610.10 acres of land, more or less, in Mellette County, South Dakota, designated as Tract No. 189 of the Two Kettle Project on the Rosebud Indian Reservation.

And it appearing to the satisfaction of the Court that all persons having or claiming any interest in said land or any part thereof have heretofore filed herein their stipulation for judgment upon which the Court has made and entered its Findings of Fact, Conclusions of Law, and Order for Judgment, the Court FINDS and ADJUDGES that, by virtue of the filing of said declaration of taking and the deposit of such compensation, said land was taken and condemned for the use of the United States of America, the plaintiff herein, in connection with the Two Kettle Project on the Rosebud Indian Reservation in South Dakota, and the plaintiff thereby became the owner of said land in trust for the Rosebud Sioux Tribe of Indians of South Dakota and entitled to the immediate possession thereof, the estate so acquired is the full fee simple

title thereto, and the defendants named in the petition for condemnation and amended petition for condemnation and all persons claiming by, through or under them, or any of them, subsequent to the commencement of this action, have no right, title or interest therein or lien or encumbrance thereon and have no right to share in the compensation therefor except as provided in said order for judgment.

IT IS FURTHER ADJUDGED that the defendants S. J. Larson and Ellen G. Larson be and they hereby are relieved of the terms of their option dated April 22, 1941, whereby they offered to convey said land to the plaintiff for the sum of SIX HUNDRED TWENTY DOLLARS ($620.00) net to them.

The Court further FINDS AND ADJUDGES that the just compensation for said land is the sum of SIX THOUSAND DOLLARS ($6,000.00) which sum is now on deposit in the Registry of the Court.

IT IS FURTHER ORDERED that the Clerk be and he hereby is authorized and directed to disburse such compensation as follows:

To the County Treasurer of Mellette County, South Dakota, in payment of taxes on said land, the sum of	$1,815.79
To M. A. Brown, Chamberlain, South Dakota, on account of recording and abstract fees advanced by him, the sum of (the excess if any to be paid to the said F. A. Anderson)	$25.00
To F. A. Anderson and First National Bank of the Black Hills, the balance, to wit: the sum of (the check therefor to be delivered to First National Bank of Black Hills)	$4,159.21
Total	$6,000.00

and to transmit the checks for such amounts to Matthew A. Brown, Special Attorney, Department of

Justice, Chamberlain, South Dakota, for delivery by him to the payees.

Dated this 12th day of December, 1941.

By the Court:

A. LEE WYMAN,
Judge of said District Court.

Attest:

ROY B. MARKER,
Clerk of said District Court.

[SEAL OF COURT]

[Indorsed]—Filed Dec. 12, 1941, Roy B. Marker, Clerk.

APPENDIX I

AUGUST 21, 1947.

Hon. HARLAN J. BUSHFIELD,
United States Senate.

MY DEAR SENATOR BUSHFIELD: Receipt is acknowledged of your letter of August 11 about Mrs. Charlotte Gordon Odden's application for a patent in fee covering her 160-acre allotment, No. 4248, on the Rosebud Reservation, described as the SW¼ sec. 11, T. 96 N., R. 74 W., 5th P.M., Tripp County, South Dakota.

The application was presented by Mrs. Odden sometime in February, and after action by the Tribal Council the papers were received about April 1. Because of the shortage of personnel we were unable to handle this case as promptly as it should have been handled. I regret to inform you that the papers in this case were set aside for some time without action. The application has now been approved. We are requesting the Bureau of Land Management to expedite issuance of the patent. When the patent is received, it will be promptly sent to Superintendent Whitlock for delivery.

We regret the delay in the matter.

Sincerely yours,

(Sgd) H. M. CRITCHFIELD,
(For the Commissioner).

Bureau of Land Management, with original report on application for a patent in fee. Special attention to this case will be appreciated.

U.S. GOVERNMENT PRINTING OFFICE: 1979